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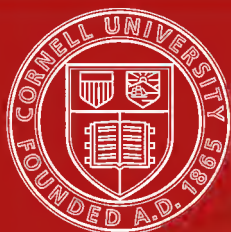
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Daniel Webster

Under the Elm at Marshfield, from a Crayon drawing by G. P. A. Healy,
in the possession of Mr. Benjamin F. Stevens

THE WRITINGS AND
SPEECHES
OF
DANIEL WEBSTER

IN EIGHTEEN VOLUMES



VOLUME SEVEN

The Writings and Speeches of
DANIEL WEBSTER
In Eighteen Volumes · NATIONAL
EDITION · Illustrated with Portraits
and Plates · VOLUME SEVEN
SPEECHES IN CONGRESS



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DEDICATION¹

TO

FLETCHER WEBSTER, Esq.

MY DEAR SON :

I DEDICATE one volume of these Speeches to the memory of your deceased brother and sister, and I am devoutly thankful that I am able to inscribe another to you, my only surviving child, and the object of my affections and hopes. You have been of an age, at the appearance of most of these speeches and writings, at which you were able to read and understand them ; and in the preparation of some of them you have taken no unimportant part. Among the diplomatic papers, there are several written by yourself, wholly or mainly, at the time when official and confidential connections subsisted between us in the Department of State.

The principles and opinions expressed in these productions are such as I believe to be essential to the preservation of the Union, the maintenance of the Constitution, and the advancement of the country to still higher stages of prosperity and renown. These objects have constituted my Pole Star during the whole of my political life, which has now extended through more than half the period of the existence of the government. And I know, my dear son, that neither parental authority nor parental example is necessary to induce you, in whatever capacity, public or private, you may be called to act, to devote yourself to the accomplishment of the same ends.

Your affectionate Father,

DANIEL WEBSTER.

¹ Volume IV, Edition of 1851.

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From the drawing by G. P. A. Healy, in the possession of
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VOL VII. — I

The Removal of the Deposits*

ON Friday, March 7, in presenting a memorial from the building mechanics of the city and county of Philadelphia, Mr. Webster addressed the Senate as follows:—

I RISE, Sir, to perform a pleasing duty. It is to lay before the Senate the proceedings of a meeting of the building mechanics of the city and county of Philadelphia, convened for the purpose of expressing their opinions on the present state of the country, on the 24th of February. This meeting consisted of *three thousand persons*, and was composed of carpenters, masons, brick-makers, bricklayers, painters and glaziers, lime-burners, plasterers, lumber-merchants, and others, whose occupations are connected with the building of houses. I am proud, Sir, that so respectable, so important, and so substantial a class of mechanics have intrusted me with the presentment of their opinions and feelings, respecting the present distress of the country, to the Senate. I am happy if they have seen, in the course pursued by me here, a policy favorable to the protection of their interest, and the prosperity of their families. These intelligent and sensible men, these highly useful citizens, have witnessed the effect of the late measures of government upon their own concerns; and the resolutions which I have now to present fully express their convictions on the subject. They propose not to reason, but to testify; they speak what they do know.

Mr. President, the members of this meeting have not transmitted their proceedings by mail; nor have they rested satisfied

* A Continuation of the Remarks commenced on page 239 of the sixth volume, on the Removal of the Deposits of the Public Money, and on the Subject of a National Bank, delivered in the Senate of the United States on several occasions in the course of the Session of 1833-34.

with merely causing them, in any way, to reach the two houses of Congress, and to be read and disposed of in the ordinary manner. They have forwarded them by a committee of *thirty persons* of their own body, and those thirty persons are now within the walls of the Senate-chamber. I wish, Sir, that Senators would converse with these gentlemen; I wish they would embrace the opportunity of satisfying themselves of their intelligence, their fairness, their freedom from the influence of all oblique or improper motives, and the unquestionable truth of the existence of that distress which they come here to represent. Such a communication would convince honorable members that there is no pretence, no fiction, no exaggeration, in the whole matter; but that all their words are words of truth and soberness.

Mr. President, Congress has now been a good while in session. When we left our respective homes, the pressure had not come on; and we left our friends and neighbors prosperous and happy. We have been here three months, without intercourse with our constituents and our neighbors. In the mean time, the whole condition of things is changed, fearfully changed; and I verily believe we do not fully know or feel the full extent of this change, and all the difficulty and distress which now pervade the people. If we were at home; if we were each in our own respective circles, amidst the men of business, and mingling with all classes; and if we were hearing, as in that case we should hear, every hour, of more and more trouble, of new individual disasters, and of still increasing fear and alarm; and if we could witness, as we then should witness, the despondency of those heads of families whose occupations and means of living have been thus suddenly cut off, we should be convinced that it is the imperative and solemn duty of Congress to relieve the country without a moment's delay. Sir, if half the time and the study which are now devoted to the finding out of plausible arguments to justify the Secretary of the Treasury were given to an honest and thorough inquiry into the real state of the country, I fully believe all would see the absolute necessity of immediate redress.

Sir, while we sit here, in long debates, the country is plunging deeper and deeper in distress. We must not turn away from this. Sir, let us keep our eyes earnestly on the country; for, be assured, the eyes of the country are kept earnestly on us.

And let us, Sir, take this occasion to look into facts, and examine particulars. Let us see whether there be any thing, and if so what it is, of which these our fellow-citizens complain. Do they only join in a general cry raised by others? Do they deal in unmeaning generalities, and set up an undefined and invisible cause of distress? Sir, listen to the statement; hear the facts. The committee state, that *eight thousand* persons are ordinarily employed in building houses in the city and county of Philadelphia, a number which, with their families, would make quite a considerable town. They further state, that the average number of houses which this body of mechanics has built, for the last five years, is twelve hundred a year. The average cost of these houses is computed at two thousand dollars each. Here is a business, then, Sir, of two million four hundred thousand dollars a year. Such has been the average of the last five years. And what is it now? Sir, the committee state that the business has fallen off seventy-five per cent. at least; that is to say, that, at most, only one quarter part of their usual employment now remains. This is the season of the year in which building contracts are made. It is now known what is to be the business of the year. Many of these persons, who have heretofore had, every year, contracts for several houses on hand, have this year no contract at all. They have been obliged to dismiss their hands, to turn them over to any scraps of employment they could find, or to leave them in idleness for want of any employment. But, Sir, let us look into the particulars of this case still a little further. It is well for us to dwell on them. As we have facts before us, useful for us to know, let us not hasten away from them.

Sir, how has this building business usually been carried on? Has it been by employing these mechanics as mere day-laborers? No, Sir; that, probably, would be generally the case in other countries; but in this, hitherto, and especially of late years, something better has been done by the building mechanics. Many of our young beginners, say the committee, buy a lot, partly for cash, but perhaps mostly on credit. They go to work and build a house upon it, those who furnish bricks and lumber having a lien on the land for their security. They thus unite capital, or its substitute, credit, with their labor; and by prudent management, in prosperous times, they are able to sell

their houses, when thus built and completed, at prices handsomely remunerating them. They are thus proprietors and owners, as well as laborers; and this practical ownership of property, this substantial interest in the community, is one of the causes which give independence and respectability to the mechanics in the cities of the United States, far beyond the general experience of other countries. But see, Sir, how the Secretary's "experiment" has affected the interest of these persons. On the one hand, they can now obtain no new credits, they can commence no new operations on their own account, and other and richer persons will not build houses in the present state of things; so that these mechanics are out of employment; and, on the other hand, nobody buys, at fair and usual prices, the houses which they have already built; but they are obliged to sell them to capitalists, or others, at great loss. At the same time, therefore, that they are deprived of employment for the present, and the hope of it for the future, they are subjected, also, to great sacrifices in the earnings of former years.

These, Sir, are plain matters of fact; and they are manifestly the results of the measures of government. Have not these mechanics, then, a right to complain? Ought they to hold their tongues, and starve, in order to enable the Secretary to try his experiment? Are they to be the willing victims of such fantastical and arrogant schemes? No, Sir; that is not their notion of patriotism and duty. They think the government was established for them, and for the rest of the people of the United States, for their protection, security, and happiness. They think it not a subject for the practice of every raw conceit, every presumptuous theory, every impulse of arrogant and self-sufficient love of change. Sir, they are not the dupes of the Secretary's experiment; and, if they can help it, they do not intend to be its victims. They know full well in what purpose these measures originated, which have since obtained the name of the "experiment." They think they have a right to demand of Congress not to sanction such purposes to their ruin. As American citizens, they demand the shelter of the laws; as tax-payers to government, they demand the protection of government; as industrious citizens, they demand security for their industry; and they protest, solemnly protest—in their name, Sir, in their behalf, in their presence, I now enter their protest—against these

unnecessary and wanton measures, which destroy their property, break up their employments, and reduce them and their children to want and beggary.

Mr. President, the Senate will perceive that, in one of the resolutions, this meeting of mechanics expressed their hope that the Governor of Pennsylvania would adhere to his former opinions, and lend his countenance and support to the restoration of the currency, by rechartering the bank. In this hope they have been disappointed. They feel it to be a great misfortune, certainly, that they do not come here sustained by the government of the State at home. No doubt, Sir, it is a great misfortune; at least, I agree with them in thinking it such. They most assuredly had expected a different result of the Governor's deliberations. In addition to their intense individual interest in this great question, they feel an interest, also, in the public works of the State, which have come, or may come, to a stop, in consequence of the pressure of the times; although it is true, perhaps, that they have not so direct an interest as their fellow-citizens of Lancaster County, whose memorial has just been presented, since the great western railway is to penetrate that important county from end to end. I refer to the proceedings of Governor Wolf, Sir, with entire respect, personal and public; but I cannot help expressing my deep regret at the views which he seems to have adopted. I would even hope that the subject has not yet passed beyond his reconsideration, because I am fully aware of the weight and influence of Pennsylvania on this great question. Yet, Sir, I see nothing in this proceeding to alter my own view in the slightest degree. The state of things is not changed. The promulgation of such opinions by the chief magistrate of Pennsylvania, is, in my judgment, unfortunate, because its only effect is to prolong the sufferings of the country by postponing the only adequate remedy.

Sir, the agitations of the country are not to be hushed by authority. Opinions, from however high quarters, will not quiet them. The condition of the nation calls for decided action, for the prompt interposition of Congress; and until Congress shall act, be it sooner or be it later, there will be no content, no repose, no restoration of former prosperity. Whoever supposes, Sir, that he, or that any man, can quiet the discontents or hush the complaints of the people by merely saying,

"Peace, be still!" mistakes, shockingly mistakes, the real condition of things. It is an agitation of interests, not of opinions; a severe pressure on men's property and their means of living, not a barren contest about abstract sentiments. Even the voice of party, often so sovereign, is not of power to subdue discontents and stifle complaints. The people, Sir, feel great interests to be at stake; and they are rousing themselves to protect those interests. They consider the question to be, whether the government is made for the people, or the people for the government. They hold the former of these two propositions, and they mean to prove it.

Mr. President, this measure of the Secretary has produced a degree of evil that cannot be borne. Talk about it as we will, it cannot be borne. A tottering state of credit; cramped means; loss of property and loss of employment; doubts of the condition of others; doubts of their own condition; constant fear of failures and new explosions; an awful dread of the future,—Sir, when a consciousness of all these things accompanies a man at his breakfast, his dinner, and his supper; when it attends him through his hours both of labor and rest; when it even disturbs and haunts his dreams; and when he feels, too, that that which is thus gnawing upon him is the pure result of foolish and rash measures of government,—depend upon it, he will not bear it. A deranged and disordered currency; the ruin of occupation; distress for present means; the prostration of credit and confidence; and all this without hope of improvement or change,—is a state of things which no intelligent people can long endure.

On Tuesday, March 18th, Mr. Webster presented a memorial from citizens of Boston, with the following remarks.

It will be perceived by the Senate, that I have a roll before me of no ordinary dimensions. It is a protest, respectfully addressed to both Houses of Congress, against the recent proceedings of the executive government in regard to the public moneys of the United States, and urgently requesting Congress, by the interposition of its own just authority, to restore the Constitu-

tion and laws to that free and proper action which the public interest and prosperity demand. This paper, Sir, proceeds from a place not altogether obscure, not altogether unknown in the history of the United States. It comes from the people of Boston, assembled in Faneuil Hall; it comes from those walls in which the earliest accents of independence rang; from under that roof beneath which our young American Liberty shook her wings, ere she went forth, for the first time, to fly over a thousand hills, and to proclaim independence to three millions of souls. It was sent by those, and the sons of those, who, in the same place, in '74, '75, and '76, had heard the voices of Otis, of Warren, and of Hancock, and who gave to those distinguished speakers as much patriotic impulse as they received from them.

This paper is signed by 6,841 independent voters, tax-payers, and men of property of the city of Boston. Here are no men of straw. This paper presents the names of men of different habits and occupations, electors of that city; and, so far as I know, of a greater number of persons than any excited election has ever called together. The names are here for the inspection of the Senate; and my colleague, who is well acquainted with many of them, can vouch for their high standing and respectability. Whatever character the memorial may bear elsewhere, it here challenges investigation. The sentiments of the meeting at which the memorial was agreed upon approached nearer to a feeling of unanimity than is usual on such occasions; and the strictest investigation will be unable to detect in it any fault, even if accidental error should be discovered. The memorial has no secret communication with the government, or any department of it. I have heard, it is true, of attempts which have been made to influence some departments of the government by communications not destined to see the light or to reach the public ear. I will not say that by such communications the President has been deceived, but I will say, that, if he listens to them, there is great danger of his being deceived; and I hope he will look with great caution at any paper which comes to him without his possessing a full knowledge of those who framed it.

An honorable Senator from Tennessee, early in the session, expressed an opinion, with regard to these representations to Con-

gress, equally sound and liberal. He said he looked with distrust on any proceedings which had been got up by those who had any interest in the offices of the government. No such interest influenced those whose memorial I now present. They have no party feelings which would induce them to uphold the evils produced by the measures of those who administer the government, and they have no motives to make them causeless fault-finders with the chief magistrate. He has recently been with them, and they have received him with hospitality and cordiality. Many of them, though not all, preferred him for the distinguished station to which he has been elevated; but all saw that a majority so large as to command respect had placed him at the head of the government, and they cheerfully acquiesced. They wish nothing else but that he should complete the second term of his presidency with as much honor as has distinguished that of any of his illustrious predecessors. They are not eager complainants against the measures of the administration; they are not swift witnesses in the cause in which they are engaged; they did not rush forward to make known their sense of their own grievances at an early hour; they have not raised the cry of distress, whether distress existed or not; they come to speak their sentiments with moderation and firmness; they come to speak of their sufferings, and to describe a state of things they know to exist.

This paper has been brought here by a committee of gentlemen, of whom, as they are my neighbors and friends, I can hardly speak with delicacy; and especially as some of them are as well known to Congress as to myself, and need no recommendation from me. They are gentlemen of different relations in life, social and political. They come here to testify to what they know; to represent a state of things which they believe the majority of Congress cannot realize, and which they believe they cannot, without actual and personal participation, understand. Their mission is to Congress; they have no order to go elsewhere for relief, have no message for any other department of the government; and, believing that the evils of which they complain admit only of legislative remedy, they come to the legislature. Believing the law to have been violated, they come to Congress; believing that distress exists to a calamitous extent, and believing that no other power on earth can relieve it, their

commission is to the Senate and House of Representatives of the United States exclusively. Their protest is on such a subject, that no consideration on earth could have induced them to sign such a paper, had it not been for that alarming, shocking state of things, so deeply affecting the public interests. Has not all incredulity on the subject been satisfied? Have not the whole of the population, from Maine to New Orleans, been satisfied? Have not all their doubts been silenced? If there be, on the vast surface of this happy country, on the sides of its fertile hills, and in the soil of its rich valleys, — if there be any spot so favored that distress has not reached it, let the inhabitants of that spot rejoice; but let them rejoice with fear and with trembling, for so sure as the light of the sun, if I may compare what is beneficent in action with that which is deleterious, — so sure as the light of the sun will, in due time, penetrate the deepest shades of the forest, so sure is it that the distress which now affects the industry and prosperity of a great part of the country must act everywhere and be felt everywhere. In the opinion of these memorialists, the act of the Secretary of the Treasury in removing the public deposits from the Bank of the United States plainly violates the chartered rights of that corporation. And is it not so? The act is unrepealed. The benefit that was intended to be conferred on the bank for the services it was to render the government is not at present enjoyed by it. It has been deprived, then, of one part, and that the principal part, of the consideration which formed the ground of the contract which has been entered into with the government. How has it been deprived? The courts are open; has it been summoned into them? The law is in operation; has it been made to act on the bank as a delinquent corporation? No. No one arraigns it before a tribunal. Nobody brings it to trial for a violation of law. It exists, has its functions, as a corporation; but it is deprived of one of the principal advantages secured to it by its charter, and deprived for such reasons as are before the Senate and before the country.

The memorialists are not unaware, that, if rights are attacked, attempts will be made to render odious those whose rights are violated. Power always seeks such subjects upon which to try its experiments. The individuals to whom I have reference protest against the executive denunciation of the bank. They

protest against the executive chief magistrate raising, waging, and carrying on war against that corporation. They think they see the cause that has produced their present distress in the relations that have existed between the government and the bank. May we not distinctly see the origin of that controversy which has so much agitated, and still agitates, the country, and which carries so much distress to every family? Has it not assumed from the beginning, and does it not still assume, the character of a warfare between the President of the United States and the government of the Bank of the United States? It has not only been said in the common vehicles of party exultation and commendation, but it has been said within the walls of Congress, that, in triumphing over that institution, in conquering it, in bringing it to the feet of the President, he would earn for himself a more flourishing garland, a more glorious victory, than he won by the battle of New Orleans. The sentiment from which that mode of commendation sprung is easy to be seen. I fear there is a love of conquest, a thirst for victorious struggles, a delight in triumphing, which has brought on the conflict between the administration and the bank, while the interests of the people are crushed between active and defensive operations.

The memorialists think that such a controversy is out of place between the President and the bank, that the origin of his action should be far above it, that neither the bank nor any other corporation should entitle itself to any share of his personal hostility. They therefore protest against the continuance of that war between the executive on the one hand and the bank on the other, as it is destructive to them, injurious to the whole country, and not a little discreditable to its character in the eyes of the world. They protest against the act of the executive in regard to the public treasure, as tending to bring about that state of things which the gentleman from Kentucky has so often presented to the Senate, the union of the purse and the sword. They recognize the chief magistrate as the commander-in-chief of the army and navy of the United States; they recognize in Congress the power and duty to guard the national resources; and they think that the withdrawal of the public revenue from a place fixed by law, and settled by the charter of the bank, for reasons connected in no way with the safe-keeping of the monies, but for opinion's sake, is an unauthorized act. After rea-

soning, and after inquiry upon the subject, the moneys were acknowledged to be safe. Congress having recently acted on the subject, and having seen no reason for the change, they are of opinion, that the reasons given for the removal of the public treasure are altogether insufficient.

They think that the effect of the measure is to augment the rapidity of a tendency which they believe to have been cherished by the government for some years past; and that is a tendency to increase power and influence in the executive hands. They are of opinion, that the removal of the public revenue from a custody where it was under the eye of Congress to a custody where it is only under the eye of the Secretary of the Treasury, is one great proof of the existence of the tendency to increase executive power. Are they not right? Where are the public treasures of the United States? No man in this Senate knows; no man in the other house knows. The last time that the Senate heard of them, they were deposited in certain banks not created or fixed by the will of Congress. They may have been changed, for aught the Senate knows, within the last half-hour, to some place which it knows not. What was the condition of the treasure six months ago? Was it situated as it is now? Did not every member know where the money was then? and had not Congress an account of it, and could it not see that it was all there? Has Congress any such right now? Has that house, or the other, the power to go to the Bank of the Metropolis in this city, or to the Manhattan Bank in New York, in order to see that the money deposited in those places is safe? The executive has now the possession of the public treasure, and Congress has no control over it. It is a fact not to be denied, that every dollar of the public money, ordinarily eight to ten millions, from the moment of its receipt at the custom-house and the land-offices to the moment of its appropriation under the authority of law, is under the entire, exclusive government of the Secretary of the Treasury, Congress knows not where, Congress has not directed how.

The memorialists think that this withdrawing of the public money from the inspection of Congress, from the guardianship of Congress, and placing it where it is subject to the guardianship and control of the officers of the executive government, is an encroachment upon the just rights of both houses of Con-

gress. They protest against that violation of the spirit of the Constitution. They profess themselves to be in favor of a national bank ; but that is a matter which they would leave most cheerfully to the wisdom of Congress. They do not insist upon a national bank ; that may be a measure of expediency or in expediency ; but they do insist that the law shall be upheld, that the power of Congress shall continue to be exercised in regard to the disposal of the public revenue, and that the public treasure shall be under the authority of those who have a right to the control of it according to law. They declare that, in the present state of the country, looking to the effect of those measures and the extent of the evil, they see no remedy but in Congress ; they see no remedy till Congress shall take up the subject, and determine to act by its authority, and establish such measures of relief as its wisdom shall dictate.

Mr. President, I entirely agree with them, I agree with them altogether, that relief must come from Congress, or through Congress. But I wish to say that relief, though it come through the instrumentality of Congress, must have a higher origin. It cannot come from the executive department in the first place ; the case is past the surgery of all such practitioners. No state doctors, beginning where they may, or ending where they may, have power over the present affliction of the community. Not one of them can pluck up this deep-rooted sorrow. It is a case in which the patient must minister to himself. The people must take the remedy into their own hands ; they must act, indeed, on the case through Congress, but they must act by their own will and their own power.

The spirit, and the only spirit, that can move over the face of these waters, with power to reduce chaos to order ; the only spirit that can cause this elemental strife to subside, and the sun again to appear in the east, — is the intelligent, manly, free spirit of the American people, summoned by the state of the country, and by the state of their own interests, to come and put a check to such usurpations of power, and to apply that remedy which they, and they alone, can apply.

The Removal of the Deposits 15

ON Friday, March 28th, on presenting a memorial from citizens of Albany, Mr. Webster said : —

MR. PRESIDENT, I have the honor to present to the Senate a memorial from the city of Albany.

New York, Philadelphia, Baltimore, and Boston have already laid before Congress the opinions entertained in those cities by men in all classes of society, and of all occupations and conditions in life, respecting the conduct of the administration in removing the public deposits. To these Albany now joins her voice, a voice not less clear, not less strong, not less unanimous, than that of her sister cities.

It is well known to you, Sir, and to gentlemen on the floor of the Senate, that Albany, for its size, is an extremely commercial city. Connected with the sea by one of the noblest rivers on earth, it is placed, also, at a point at or near which many hundred miles of inland navigation, from the West and from the North, accumulate the products of a vast and fertile interior, and deliver them for further transport down the North River, by sailing vessels or steamers. In return for these riches of inland industry, thus abundantly poured forth to the sea, Albany receives, of course, large amounts of foreign merchandise, to be forwarded to the interior, and to be distributed for consumption in the western districts of the State, along the shores of the lakes, and even to the banks of the Mississippi itself. It is necessarily, therefore, a place of vast exchanges of property; in other words, a place of great trade.

Albany, I believe, Sir, has a population of twenty-eight or thirty thousand people. It has given, I learn, on interesting occasions, nearly, but not quite, thirty-eight hundred votes. The paper whose folds I am now unrolling, and which I have risen to present to the chair, bears twenty-eight hundred names, all believed to be qualified electors. Great pains has been taken to be accurate in this particular; and if there be a single name to this paper not belonging to a qualified voter, it is here not only by mistake, but after careful scrutiny has been had, for the purpose of avoiding such mistakes.

Every man, Sir, whose name is here, is believed to have a right to say, "I am an American citizen; I possess the elective franchise; I hold the right of suffrage; I possess and I

exercise an individual share in the sovereign power of the State; I am one of those principals, whose agent government is; and I expect from government a proper regard to my interests."

It will thus be seen, Sir, that this paper expresses the sentiments of three fourths as many citizens of Albany as have ever been collected, on any occasion, at the polls of the city. What these sentiments are, the Senate will be at no loss to understand, when the paper shall be read. Its signers possess the faculty of making themselves fully understood.

This memorial is brought hither for the purpose of being laid before Congress, by a committee of eighteen persons. Some of these gentlemen are well known within the walls of the Capitol, and none of them altogether unknown to members of this or the other house. They come, Sir, to vouch for the general respectability of the signers to the memorial. They come to answer for them, as persons capable of perceiving, not only the general fact that recent measures of government have deranged the business of society, but of seeing also precisely how those measures have operated on their own business, their own employments, and their own prosperity.

Unpromising, Sir, as the task is, ungrateful, nay, almost hopeless as it is, this committee have not declined the wish of their fellow-citizens, that they would bring this solemn appeal to the notice of the two houses of Congress. The Senate can learn from them, by personal inquiry, that there are included among the memorialists individuals of every class, occupation, employment, profession, and trade, in society. The members of the committee come to make good the declarations of the memorial as to the state of things actually existing at Albany.

Albany, Sir, has been flourishing and prosperous, and seemed rapidly rising to greater and greater heights of commercial importance. There are circumstances which would appear to have favored her, and to have enabled her to stand the shock better than her neighbors. In addition to her capital, it has been understood that she was benefited in her money operations, to a considerable extent, by the use or the custody of State funds. But the Senate will not be surprised to learn, notwithstanding all her advantages, that she has not escaped the general disaster. Whatever else is to be said against the Secretary's meas-

ures, they cannot be charged with being partial in their operation. They have the merit of impartiality, inasmuch as they produce universal distress.

Sir, our condition is peculiar. One hardly knows how to describe it. In the midst of all the bounties of Providence, and in a time of profound peace, we are poor. Our Secretary of the Treasury, Sir, is not Midas. His touch does not turn every thing to gold. It seems rather to turn every thing into stone. It stops the functions, and the action, of organized social life, and congeals the whole body politic. It produces a kind of instantaneous petrification. We see still the form of our once active social system, but it is without life; we can trace the veins along its cold surface, but they are bloodless; we see the muscles, but they are motionless; the external form is yet fair and goodly, but there is a cessation of the principle of life within.

Sir, if one could look at the state of the country at this moment, who had never heard what that "EXPERIMENT" is which the Secretary is trying, he would naturally suppose him to be some necromancer, some Prospero, who had power over the principle of action in the whole nation, and who was amusing himself, by the exercise of that power, in seeing what sort of a spectacle a great, busy, stirring community would exhibit, when his wand should bring all its members to a sudden pause, check them in a moment of great activity, and hold every one in the precise attitude in which he should be found when the charm begins; as painters, though they cannot represent progressive action on the canvas, can yet represent action suddenly arrested; or as the interior of the mountains discloses animals caught in full life and vigor, and imbedded for ever in the subsiding elements of the general deluge.

Or perhaps, Sir, such a spectator might suppose that our Secretary had been imitating infantile curiosity, which thrusts its busy fingers into the opened watch, for the sake of seeing how pretty its little wheels will look when they all stand still.

But whatever a disinterested beholder might think of the manner in which the Secretary is amusing himself with "experiments" upon the nation, the people of Albany have had quite enough of experiment. They find it efficient for every thing but good. There are some things, they admit, which it has fully

proved. It has proved the rashness, the delusion, and almost the insanity, of those who undertook it.

One of the most visible effects of this measure, to the people of Albany, is its check to the growth of the city. It has been fast increasing in houses and in the number of its inhabitants. But here are persons well acquainted with the facts and circumstances, who declare that the houses in building, this year, are not one twentieth the number of the last year. What is to be said in answer to that fact? The carpenter and the mason are standing still, with the rule and the trowel in their hands, to see when the Secretary shall have done with his experiment. Albany is a great lumber market. The very large sum of two millions of dollars is usually paid annually for this article in that city. But there is now no demand for it. The same causes operating elsewhere which operate in Albany, the timber is not wanted, cannot be used, and cannot be paid for. A great coasting trade is also, in ordinary times, carried on from Albany. Lumber and other articles, brought down the canals, are taken down the river, and scattered all along the shore, almost to the eastern extremity of the Union. And we all know what numbers of sloops and steamboats usually cover the surface of the Hudson, from its mouth to Troy. Last year, as I learn, from thirty to thirty-five steam tow-boats found employment between Troy and Albany and New York. This great extent of navigation gave wages, of course, to multitudes of industrious men, whose present power of finding employment may be judged of by the fact that six or eight of these boats are at this time adequate to the calls of commerce. The whole business, it is said, has fallen off at least two hundred per cent.

It is natural to ask, Sir, how the times have affected the usefulness of the great canal, the true glory of New York, that imperishable monument of the fame of a great man; a man of conceptions large enough to embrace a high and noble purpose, and who had steadiness to pursue that purpose through evil report and good report, let the strife of temporary party do its best and its worst, until he had accomplished it. I am told, Sir, that along the line of this great work the quantity of flour now ready to be embarked, when the season of business commences, is not more than equal to one tenth of the amount, last

year. The wheat is in the country, but there is no demand for it in the city. The farmers and the millers are obliged to keep it on hand. At the commencement of the harvest last year, wheat was worth a dollar a bushel in the western part of New York, and where, as I am now informed, it goes off heavily at 68 and 70 cents. There are cases in which the article has been carried to the usual place of sale, and carried back again, for want of buyers. Indeed, an instance is mentioned of a vessel which proceeded, from one of the towns on the river, to New York, lay at the wharf a week, without being able to sell a dollar's worth of her cargo, and then returned back with it to her place of departure.

It will be at once seen, that those measures of government of which the memorialists complain neutralize the benefits of the canal. They lower the price of wheat in the western part of the State, as much as the opening of the canal raised it. The cause of all this loss is obvious. There is no market; and there is no market because there is no money; and there is no money because the measures of government have deranged the currency, checked circulation, and shaken credit.

One of the gentlemen now here is extensively concerned in the business of transportation on the Western and Northern canals. He is connected with lines which own, together, two hundred canal-boats, and usually employ fourteen or fifteen hundred men, and as many horses. An immediate loss of employment for at least half of this capital and these hands is already among the consequences of the Secretary's experiment. This shows, Sir, how the measures of government affect wages, ay, Sir, wages, the only source of the poor man's income. Be it remembered, that the administration is waging war for the benefit of the poor. It has attacked the bank, laid hold of the public treasures, disregarded the votes of Congress, and thrown the whole country into a state of violent excitement, out of pure sympathy for the poor, and to protect them against the grinding power of moneyed corporations! Well, Sir, are the poor better off? Are wages higher? Is employment more easily obtained? Is labor more richly rewarded? Let the Senate judge of this matter, when I state, as I am authorized to do, that men in Albany, who, three months ago, were earning and receiving *a dollar and a quarter a day*, six days in the week, are now soliciting

employment for two days in the week only, and for *sixty-two cents* a day! And other industrious men, who were receiving a dollar a day, are now content to work for their board only.

There is in the city a large manufacture of iron castings for stoves, hollow ware, and machinery. Since December it is said that this manufacture has fallen off one half, and a hundred hands have been discharged in a day, most of them heads of families. If this be so, Sir, and the case be but a common one, a fearful account must be running up against those who have heedlessly brought such calamities on the laboring classes. There is also, I hear, a very extensive fur business done in the place; a single establishment employing no less than five hundred men and women in the manufacture of caps, of which article no less a number than two thousand is manufactured daily, in the season of work, if any one can conceive where they find heads for so many. From causes like those which affect other manufactures, this, I hear, is also unfavorably affected, as regards the great number of persons to whom it gives employment.

It would be easy, Sir, to run into other details and other particulars. It would be easy to follow the effects of this derangement of the currency, not only into all classes, but until we find it affecting the concerns of every individual, and touching the home comforts of every family. But such detail would be only repetition. All evidence and all argument must be lost on those who do not already, from what the country exhibits on all sides, see, and feel, and acknowledge, that the distress of the times is universal and unparalleled.

If, indeed, these memorialists, or other petitioners from the same State, needed confirmation in their representation of the present state of things, it might be abundantly found in the late communication from the executive of New York to the legislature. Distress is no fiction, when the extraordinary measure of a State loan is necessary, to sustain the common operations of business, and to give new credit, or at least new power of accommodation, to the banks. It is no trifle, certainly, when such a measure is proposed, and when it is recommended, not indeed by the executive himself, but by those who support and justify it, by reference to precedents in Revolutionary times, and in the days of State bills of credit. It is no merely pretended

state of alarm, when the banks find two millions of their own paper returning upon them, while they curtail their loans but six hundred thousand dollars. This message, Sir, admits a state of things, and argues upon a state of things, the existence of which has hitherto been loudly denied by nearly all the friends of the administration. As to the measure proposed by the executive of New York, it becomes me, of course, to say little of it, and, indeed, to say nothing, except so far as not only New York, but the whole country, may have an interest in it. I abstain from any thing of a local nature, or belonging exclusively to State politics and State concerns. But, Mr. President, I may be permitted, I hope, to say, that it fills me with deep and unfeigned regret for the present, and with sad, sad forebodings for the future, to see the great State of New York, instead of concurring in experienced and well-approved national measures to promote a national object, intent only on applying local means for local relief.

Instead of giving a lead, in the national councils, to measures of a general character, such as embrace the whole country, and such as she herself has heretofore repeatedly supported, it is painful to see her denying to this government powers so long acknowledged by herself rightfully to belong to it, and to find her driven to measures of at least a novel and questionable nature, to uphold those interests which she, and a majority of all the other States, have heretofore not only admitted, but strenuously contended, were confided to the just guardianship of the general government.

I observed the other day, Sir, and I said it neither for the sake of sounding an alarm, nor of turning a sentence, that, if this experiment of the executive government is suffered to go on, it will bring us to consequences nearly touching the powers and the continued action of this government. I verily think so. As surely, Sir, as you sit in that chair, or as I stand on this floor, our tendencies at the present moment are strong towards disorganization, to the times of State securities, bills of credit, separate State currencies, and paper money; and, if those tendencies be not seasonably arrested, they will make shipwreck of our highest interests. The chain of a common currency, a common standard of value, a common medium of exchange, is in imminent danger of being broken. Induced by our relinquish-

ment of our own just rights, and the abandonment of our own proper powers and duties, individual States, under an alleged necessity, will march on, but without concert or coöperation, to greater and greater control over the currency of the country.

Whatever gentlemen may say of the limitation of the power of Congress to the exclusive regulation of coin merely, I cannot but be persuaded, that that authority which is to regulate by paramount laws the commerce between the States must of course regulate that, whatever it may be, which is to perform the office of money in carrying on this commerce. Can any man maintain, that the sovereign power over commercial regulation rests in Congress, but that the power, nevertheless, of regulating the great agent of that commerce, money, is vested in twenty-four different States? Is our system thus disjointed and deformed? I repeat, Sir, what I have so often said, and what I believe with the utmost sincerity of conviction to be true, that, unless by wise legislative provisions, enacted by the authority of Congress, we secure the safety of the currency, we are not only in great peril of a paper-money system, but we omit to maintain that which is one of the best, the easiest, the most grateful, and the strongest ties of our national Union.

When it had become doubtful whether the present Bank of the United States would be continued, and especially after it was supposed probable that no bank would hereafter exist, under the authority of Congress, we know what followed. Gigantic projects of State banks sprang up everywhere. We hear of propositions for new banks, with very large capitals, in Kentucky, Tennessee, Ohio, and Louisiana. We see a motion in the legislature of New York for a new bank with a capital of ten millions of dollars, only giving way to a proposal for a loan of four millions; it may probably be much larger. We see, at the same time, in Pennsylvania, an application for a bank with ten millions capital, *and a power to have branches in other States.*

Mr. President, we are thus breaking off from our accustomed course of public policy on this great question of the currency. We are throwing its disposition into other hands; and we are doing this, because the constitutional power of Congress to establish a bank is denied; denied in quarters where it has heretofore been most zealously asserted. The respectable gentle-

men who represent the State of New York in the Senate, both of them, stand up now, in the forty-fifth year of the government, and declare, as representatives of the State of New York, that Congress transcends its power when it establishes a bank! This, Sir, is not a little extraordinary and portentous.

Mr. President, I have faith, stronger than that of most others, I believe, in the duration of this government; and I mean, if possible, to die believing; but I confess I sometimes feel misgivings, when I see powers of government, of the very highest importance, held to be constitutional or unconstitutional according to the prevailing party politics of the moment; powers found in the Constitution to-day at the first glance, but not to be found in it to-morrow by the most searching construction; powers to-day safe, necessary, and useful; to-morrow, unsafe, unnecessary, and destructive of liberty. Sir, when these respectable gentlemen were in their cradles, or at school, the delegation from New York, in both houses of Congress, gave their unanimous support to the bill incorporating the first Bank of the United States. They concurred, to a man, with General Washington in affirming the constitutionality of a bank, owning its expediency, and actually creating and establishing it. This was the constitutional opinion of New York in 1791. In her delegation, in both houses, were gentlemen who had been active and leading members in the Convention which formed the Constitution, and had just come fresh from that great work into Congress. Having helped to frame it, having argued it before the people, they came now to administer it. With the Constitution before them, the work of their own hands, with a perfect knowledge of their own purposes, and the purposes of others, in framing it, they voted to establish a bank. We know that, of all the members of the first Congress who had been members of the Convention, very few voted against the bank on any ground whatever. A great majority, I believe three or four to one, were in favor of it on all grounds. New York, at least, was unanimous; with her there was no doubt or hesitation.

In 1811, the charter of this first bank expired. It was a day of great party excitement, and party did unquestionably mingle itself with the proposition for the renewal of the charter. The constitutional question was then raised, and the bill for continuing the bank was rejected, if I remember, by the majority of a

single vote in one house, and by the casting vote of the presiding officer in the other. Of those voting against the renewal, some proceeded on grounds of constitutional objection, and others on other grounds, as was recited to us, fully and particularly, some sessions ago, by an honorable gentleman then a member of the Senate from Maryland.

But those who at that time voted against continuing the first bank found, by even a short experience, that they had taken an erroneous view of the subject. Within three years, they became themselves strenuous advocates for a bank; and when the bills of 1814 and 1815 were before Congress, the New York members, generally speaking, were among their most zealous advocates; or, if any of them were opposed, such opposition did not rest at all on any constitutional objections. Bills, Sir, which I thought were unconstitutional, bills which I could not vote for, bills which I thought contained such provisions as transcended the power of Congress, such, for example, as that exempting the proposed bank from specie payment, found zealous and able supporters among the members from New York; none more able, none more zealous. And, Sir, how was it in 1816, when the present bank itself was established? Was the great State of New York then found standing on constitutional objections? Was she found opposing the bank, as a great moneyed power, dangerous to liberty, establishing an aristocracy, and without an inch of ground to stand on in the constitutional power of Congress? Was judicial authority then rejected, all precedents resisted, and the acquiescence of the people and of the States set at naught and derided? Was there even the slightest doubt expressed of the power of Congress to make a bank? Far from it. Of the *twenty-seven* members from New York, then in the other house, only *seven* voted against the bill, and most of those seven are known to have so voted, not on constitutional grounds, but on particular objections to some parts of the bill. Indeed, most or all of the seven had not long before voted for a bank, with provisions somewhat different, and such as suited them better. Constitutional scruples, therefore, there were none. One of the votes in the Senate, it is possible, though I know not the fact, may have been given on such scruples; but it is safe to say, that at least nine tenths of the delegation of New York, in both houses of Congress, either actively

supported the establishment of the present bank, or fully and expressly admitted the power of Congress to create it. It was created; they helped to create it; without them it could not have been created. It is the creature of New York opinions and New York power. And in all this, Sir, the legislature acquiesced, and the people acquiesced.

Now, Sir, when this plain and incontestable history of the past is contrasted with the solemn declarations, the labored arguments, and the patriotic invocations to liberty, which we have heard uttered on this floor against all national banks, and all power of Congress to establish such banks, is it without reason that I consider such changes of opinion and conduct as things not auspicious to the future progress of our government? Is it mere faint-heartedness which brings on these forebodings, when I thus see that opinions, on great questions, of the power of Congress, change their hues, and run through all the colors of the prism, according to the shifting attitudes and varying positions of temporary political parties?

But, Mr. President, if I may be allowed, since it affects questions of great common concern, to speak of opinions existing in States to which I do not belong, I fully believe, notwithstanding all appearances to the contrary, that three fourths of the people of the State of New York always have been, and now are, clearly of opinion that a Bank of the United States is a constitutional, a useful, and a necessary institution of this government. I speak, Sir, of the spontaneous sentiments of the people, and not of such principles of action as, being recommended by organized bodies, a majority of the people may be induced to adopt as the basis of political and party associations, and act upon accordingly; and I entertain not a particle of doubt, that, if the question could be put to-day to the whole people of New York, unaffected by collateral matters, three fourths of the whole would be in favor of a bank. Nor would it be at all difficult to give reasons for this opinion, notwithstanding any inference to the contrary from occurrences here.

But, Sir, I am pursuing these reflections farther than the occasion will justify. I may not, Sir, presume to address myself to the people of the State of New York; I may not take upon myself the character of an adviser of them; but since the good citizens of Albany, through their committee, have done me the

honor to make me their organ on this occasion, I hope *they* will forgive me if I say to them, that, for the evils which they suffer, they themselves must assist to furnish the remedy. A gentleman on the other side of the Senate has said, and said truly, that these great questions must be settled at the polls. To the polls, then, let them be brought. If the right of suffrage be not an idle form, if self-government be not a delusion, if there be any thing true in the idea of popular intelligence, then political mismanagement must be corrected by political elections. I have said so often that redress *can come only from the people themselves*, that it must fatigue the ear to hear it again. I beseech the good citizens of Albany to lay this truth to heart.

If they are in earnest, if they really feel the evils of misrule, let them touch the right spring to restore proper action to the machinery of government; *let them take hold of the right lever*. They complain of violation of law; let them seek to obtain the passage of other laws which shall redress such violation. They complain of executive encroachment; as far as depends on them, let there be a legislature which shall allow no such encroachment. Some of them, with other citizens of the State, have lately acted on the principles of a motto, taken from the words of a great and good man, now removed from this scene of things. I would beseech those who have adopted that sentiment for one occasion to apply it to another of still broader interest. It is a sentiment fit for any crisis, and especially suited to the present. It is a sentiment becoming republicans. It is a sentiment fundamental to all free governments. I cherish it, not only as it is expressed in the words of a valued friend not now among the living, but for its plain truth and its mighty importance. I beseech all who value the blessings of free government, and of civil liberty, to embrace it, and act upon it. I pray them to give it scope and energy, such as the present exigency of the country requires. Let it have power to overcome minor differences; let its conciliating influence unite the heart of man to man; let it melt all smaller objects into one great purpose of honest and resolute patriotism; and let all who mean to die as they live, citizens of a free country, stand together for the
SUPREMACY OF THE LAWS.

ON Tuesday, April 25th, Mr. Webster presented a memorial from three thousand citizens of Ontario County, New York, against the removal of the deposits, with the following remarks:—

THESE memorialists are farmers, mechanics, merchants, and other citizens. They represent that they inhabit a portion of Western New York essentially agricultural, and second to none in fertility of soil and other natural advantages. This will be readily admitted by all acquainted with the county. It is in the beautiful Lake country, is large, constituting a Congressional district by itself, and is doubtless in the very first class of agricultural counties. Its great products are wheat and cattle, and its principal manufacture that of flour, although there are in the county manufactories both of wool and cotton. Ontario, in its leading character, is a county of intelligent farmers. It belongs to that interest which is at once the most general in the United States, and is also the basis of other pursuits. Its rich lands, and other local advantages, have invited into it, as the memorialists state, considerable capital, and stimulated strongly the industry of the people. The growth of the county is good proof of this. This growth resembles the vigor with which population has spread forth, and penetrated the wildernesses, in regions beyond the Alleghany. I am old enough to remember when he who had seen the Seneca Lake had performed a journey from the Atlantic coast fit to be spoken of; and I see it stated, indeed, in some interesting recent account of the settlement of this part of New York, that, when the county of Ontario was established, it contained only a thousand inhabitants, though it extended from the Seneca Lake to Lake Erie, carrying the whole breadth of the State between Canada and Pennsylvania, an extent of country now embracing thirteen or fourteen counties, with a population of nearly four hundred thousand. A country so rapidly growing, with so much necessity of sale, purchase, and exchange, of course requires credit, and confidence, and a stable currency, to conduct its business beneficially. The memorialists declare that the effect of recent measures of government has been most disastrous on all their great interests. The farmer, the merchant, the mechanic, all feel alike the pressure of the times. Produce has fallen from twenty-five to thirty-three per cent. in price, since the interference of the executive with the public revenue; and land, land itself, the great capital

of the county, the form in which the vast proportion of its property consists, has fallen, within the same time, to the same extent. I receive this information from sources to which I give entire credit.

Here, then, is a reduction of twenty-five or thirty-three per cent. in the whole property of the people, a striking off, at a blow, one quarter or one third of the whole value of what they possess! Sir, is this tolerable? All this, too, done under pretence of an *experiment*, but really and truly out of hostility to a banking corporation; out of hostility to an institution which has existed with great usefulness to the country, which is now approaching a time when it might be modified, altered, and accommodated to any new state of things, or so as to accord with the lights of past experience, and be continued, with every prospect of advantage to the country. How can conscientious men feel themselves justified in pushing, with such ruinous effects on the people, a quarrel of this kind to this extent? How do they find within their own bosoms a monitor to tell them that all this is right? If the bank was not to be renewed, why not let it quietly expire? and why not leave the public moneys in it till it should expire? A measure so causeless, so uncalled for, so destitute of all reasonable object and all just purpose, and so disastrous in its effects on the whole body of the people, is, so far as I know, nowhere else to be heard of. This changing the custody of the public money, without authority of Congress, is, as a measure of policy, wholly without justification, and, as a blow on the prosperity of the country, wholly without example. The people ought not to submit to it. Their respect, their attachment for any individual, however strong that respect and attachment may be, ought not to make them willing to submit to such an extension of executive power, and to the consequences which flow from it. And I am sure they will not submit. The country is effectually roused. The people feel a spirit stirring within them, which they know is the spirit that has come down to them with the blood which fills their veins. It is the spirit of their fathers, who did not wait till unjust power had crushed them, but who saw its approach in the lowering storm, snuffed it in the tainted gale, and met it, and resisted it, and repelled it. It is the most alarming circumstance in our whole condition, that, in order to justify the re-

removal of the deposits, principles are advanced by the executive which threaten a change in the substantial character of our government. The argument which is to justify the executive in this instance seems to me to leave little or no control to Congress over the public treasure. We thus see a constant advance in the claims of power. Those who defended the paper read to the Cabinet probably never expected to be called on to support such reasons as were afterwards given by the Secretary; and those who made up their minds to stand by the Secretary's report could not have foreseen, that, ere long, they must prepare themselves for the doctrine of the Protest. And what is next to be put forth, time only can show.

Sir, a month or two ago an honorable member of New York spoke with pleasure of the unanimity of feeling which prevailed in New York, and of the quieting, in some measure, of what he thought an unhappy controversy, which had existed heretofore in the western parts of that State particularly. I think, too, Sir, there are signs of union, and much stronger signs than there were when the gentleman alluded to the subject. Sir, the letter addressed to the honorable member from Kentucky and myself, committing this memorial to our care, is signed by names many of them not unknown here. They are Nathaniel W. Howell, John C. Spencer, Mark H. Sibley, James D. Bemis, Z. Barton Stout, John Dixson, Phindres Prouty, H. R. Schermerhorn, Robert Carey Nicholas, Abraham C. Post, Samuel Rawson, Stephen Bates, and Moses Fairchild.

Those who know these gentlemen will recognize among them persons whose political opinions have not been the same on all subjects, nor their political objects always identical. Yet they are united. They are united, as in a common cause, and seeking to remove a common evil. They come with one voice to Congress; they speak with one voice to the people; and I trust they will act with one heart and one mind in the present exigency of public affairs. It is to this union, to these united counsels and united efforts, to this sense of common danger and this common sacrifice of minor differences to high patriotic duties, that I look, and look confidently, for the salvation of the country. Every day accumulates new proofs of this growing harmony of public sentiment. Far and near, there is a rallying for the Constitution and the laws. Three days ago, we heard

of the clamorous and factious shouts of the citizens of Baltimore. Another peal now reaches us from the multitudes assembled in those same streets; and in this peal mingle many new voices of powerful tone. Sir, the American people are so well schooled in the great doctrines of free government, that they are competent to teach first principles, even to their rulers, if unhappily such teaching should become necessary. They will teach them that public complaint for maladministration of government is not clamor; that indignation for unnecessary and severe national suffering is not treason, either legal or moral; that to resist the encroachments of power is not to cabal against government; and that the people themselves are not a faction.

ON Tuesday, May 20th, Mr. Webster presented to the Senate a memorial from citizens of Columbia, Lancaster County, Pennsylvania, remonstrating against the measures of the executive, in relation to the Bank of the United States, and the executive Protest against the proceedings of the Senate.

MR. PRESIDENT, I am more fortunate than the gentleman near me, the member from Pennsylvania, as I am about to present to the Senate a paper, in the sentiments of which I heartily concur. It is a paper which records the proceedings of a Whig meeting in the town of Columbia, Lancaster County, Pennsylvania. Columbia is a respectable town, as most of the Senate know, on the Susquehannah, containing two or three thousand inhabitants, and by its position much connected with the inland trade in lumber and articles of agricultural product, as in the great line of communication between Pittsburgh and Philadelphia by those noble canals and railroads by which the enterprise of Pennsylvania has connected those two important points. The memorialists partake in the evil of the times. They have not escaped that impartial and undistinguishing scourge, "the experiment." They feel its heavy hand upon them, in the stagnation of trade, the want of employment, the disappearance of credit, and the flight of commercial confidence. Sentiments like theirs, strongly and ably expressed, have just been heard, in the memorial of the Antimasons of Alleghany County. Like the Antimasons of Alleghany County,

these Lancaster Whigs are satisfied with their experience of the experiment; and, like them, they protest against the Protest.

The Alleghany memorialists declare their opinion that the removal of the deposits was made without just cause, and that therefore it violates the word of honor of this government. And among the resolutions adopted by the Whig meeting at Columbia I find the following:—

“*Resolved*, That the Bank of the United States has acted the part of a useful and faithful public servant; that the war now being waged against it is foolish, wicked, unjust, and calculated to injure the best interests of the country; and that the charter of that institution ought to be renewed, with such restrictions and modifications as the public good may require and the judgment of Congress ordain.”

I believe this resolution is entirely true. The present state of things, in my judgment, exhibits the laws transgressed, the chartered rights of a corporate institution violated, the word of honor of the government broken. I think the withholding the deposits from the bank is a daily wrong, a confirmed infringement of its legal rights, inasmuch as it stipulated for the custody of these deposits, paid its money under that stipulation, and had done no act whatever contrary to its contract. I believe the suffering of the community is brought upon it by an act, not only unwise, but unjust; not only an act of folly, as it affects ourselves, but an act of positive wrong to others.

Mr. President, this is perhaps as fit an occasion as may occur to say something upon the motion which I made to the Senate, in the latter part of March, for leave to bring in a bill to continue for six years the charter of the Bank of the United States, with certain modifications. At that time, Sir, the country had been trying this notable experiment, or rather its own patience and forbearance had been on trial under its operation, almost six months. All men of the least pretension to sense and candor had become satisfied that very great distress existed in the country. The time for doubt and denial had gone by. The sneers which had previously been manifested in the Senate, whenever the pressure on the country was alluded to, had ceased. However men might dispute about the cause of the distress, the fact of its existence was too plain to be gainsaid. The merchants, the farmers, the manufacturers, and the mechanics had loaded

our tables with their remonstrances and memorials, and filled our halls with their committees. No measure of relief, meantime, was suggested by gentlemen connected with the administration. The only remedy was, as it now is, endurance. If we spoke of distress, they bade us hold our tongues and bear it. The sum and substance of their political philosophy was, "We must stand by the President; we must hold on upon the experiment."

In this state of things, Sir, I felt it my duty to prepare, for the consideration of Congress and the country, some measure of immediate and efficient relief. It might be rejected; but then an offer would have been made. The devotees to the experiment might cling to it, extol its wisdom, and predict its success; but the country would have an option. The condition of the country was such as was not to be trifled with; and therefore I sought for a measure that, if adopted, could not fail to be effectual. Against rash experiment, I prepared well-tryed experience; in opposition to daring and speculative theory, I offered what forty years had proved to be safe, practical, and beneficial. Allow me to advert to the main provisions of the bill which I recommended, as I desire its character should be kept, to the eye of the public, in a clear and distinct light.

What the bill proposed was,—

A short continuance of the present charter, *with an addition of its exclusive right*; so that, while this bank still continued, Congress, at its leisure, might provide another, if it chose, and bring it into existence, to take the place of this, at the end of six years;

A restoration of the deposits;

And a provision for enlarging the specie circulation, so as to increase, in fact, to a great extent, the hard money of the country, and to discountenance the circulation of small notes.

This is the substance of the measure, and if it shall be adopted the country will be relieved, and the bank will have time to collect its debts, and wind up its concerns, Congress will be at liberty, also, to adopt any system for the future which its wisdom shall approve; it may recharter this bank; it may create a new bank; it may decide it will have no bank. Meantime, and until its final decision shall be made, business will resume its wonted course, employment will revive, labor will be again in demand, commerce will spread its sails, and revenue begin

again to flow into the treasury. If there be one intelligent individual who denies that all these consequences would immediately follow the passage of this bill, that individual I have not met with. What is said is, not that this measure would not produce these beneficial effects, but that we can get along without it; that the experiment will yet succeed; and that, at any rate, the President and the party will put down the bank. If, Sir, this bill had passed within a fortnight from the time of its introduction, the country at this hour would have begun to resume its accustomed prosperity, activity, and cheerfulness; we should have despatched the public business, and been ready to go home, by the first day of June, to receive the cordial welcome of our constituents.

If we could pass it now, although the case has been growing constantly worse, yet even now it would in ten days give an entire change to the face of things. It would in a month put the cotton-mills again in motion, bring up the prices of lumber, wheat, and other products of the farm, reanimate internal trade, put life into the factories, and the mechanic pursuits, in which life is now suspended, gladden labor with the certainty of fair wages, restore confidence, bring back credit, and make the country once more what it was twelve months ago. All this good is within our reach, if we will abandon theories, when they are proved and demonstrated to be fallacious; give up follies, now that they stand as exposed and acknowledged follies; and restore the reign of the law, of justice, of good sense, and of experience.

When I last addressed the Senate on this subject, in the latter part of March, I manifested my intention to call it up again on the 21st of April. The opinion of the Senate, both on the causes of the public distress, and on the proper remedy, were very well known. A majority, it was not doubted, disapproved the whole executive proceeding in removing the public moneys from the bank, and would regard their return as the first step in reëstablishing a proper state of things. And a continuance of the present bank, with modifications, was supposed, also, to be the measure which a majority was most likely to concur in, as the remedy best suited to the occasion. The House of Representatives had done nothing to commit itself, one way or the other. Whatever might be conjectured of its course, it had come to no decision.

But before the 21st of April came, that honorable body had expressed its opinion. It had decided, by a very large majority, and in the most general terms, that the bank should not be rechartered. While this purpose remains, it is obvious that any proceeding of the Senate on the subject must be nugatory. The Senate cannot recharter the bank. The Senate, of itself, has no power to pass measures for the public relief. It can, indeed, check the measures of other branches; it can resist what it deems to be wrong, and it may show itself ready to concur in wise and proper measures of relief; but it can do no more. It would seem, therefore, to be hardly worth while to occupy the attention of the Senate with propositions for relief, to which the other house has, beforehand, manifested its determined opposition. Until there is some intimation of a change of opinion in that house, it is useless to press the measure which I proposed. For the present, therefore, I shall suffer the subject to remain where it is. When I shall next call it up will, of course, depend on circumstances. Of the measure itself, I retain the same opinion as I expressed on its introduction. It is a prompt measure; it is an efficient measure; it is a conciliatory measure; and it is the only measure which promises relief to the country. These are my opinions; and those who oppose this measure, and have nothing to propose but a confirmation of the present state of things, act on their own responsibility.

Sir, the question is before the country. Shall the bank be rechartered for a short period, until it can collect its debts, and wind up its concerns, without distressing the people? or shall it be left to collect its debts in the short period of its charter which yet remains, whatever may be the consequences to the public?

Mr. President, if Congress see fit to embrace the latter branch of the alternative; if it will not recharter the bank, even for a day, or under any modification; if it will make no new bank; if it will leave the country, in its present condition, to struggle with its difficulties and its distresses as it can;—it will be recollected, at least, that all this is not the result of necessity. It will be recollected that a different policy was proposed; that a fair and conciliatory measure was offered, was earnestly pressed on the attention of Congress, and was rejected.

Let gentlemen, then, Sir, take the consequences upon them-

selves. If the summer shall prove to be one of great embarrassment; if business shall be suspended; if trade shall stagnate; if employment for labor shall not be found; if the revenue shall fall off one half,—let it be remembered, that these consequences, one and all, might have been this day easily prevented; that plain, easy, and adequate means of prevention were proposed, but that gentlemen chose to adhere to their theories, their experiments, and their predetermined course of policy, against all remonstrances, as well within the walls of Congress as without.

Mr. President, while, like others, I am engaged here every morning in presenting to the Senate the proceedings of public meetings and the memorials of individuals, supplicating Congress to restore the public prosperity and to reëstablish the authority of the laws, I think it due to those who thus do me the honor to make me the organ of their sentiments and their wishes, and indeed to the whole country, that I should express my own opinions upon the present state of things, and upon the prospects before us.

In the first place, then, Sir, I wish to express my belief, that nearly all practical men and men of business in the country, friends or foes of the administration, have become satisfied that the “experiment” is a complete failure. Whatever some may, at one time, have believed, and whatever others have hoped, eight months’ experience has settled the question. Yes, Sir, I believe that friends as well as foes now see that the attempt to sustain the currency and maintain commercial credit by the aid of State banks has hopelessly failed. With all the aid of government, with all that party zeal could do for them, these banks have not been able to relieve the community; they have not been able to restore confidence. Confidence is a thing not to be produced by compulsion. Men cannot be forced into trust. Good credit, within local limits, these banks, or some of them, possessed; but there it naturally stopped, and cannot be forced farther.

As far as I understand, at least in this part of the country, the usual occurrences are these. If a man has the notes of State banks to any amount, he goes to the banks, and gets specie for them. Having obtained his specie, he very often goes to the Bank of the United States, and exchanges it for bills. The re-

turns made to Congress from the deposit banks, and all our information, official and unofficial, clearly show that they are not competent to relieve the country. The experiment, I repeat, Sir, has already failed. Men feel that it has failed. The friends of the administration feel that it has failed. I speak confidently, and am willing it should be remembered that I have so spoken; and I say that at this very hour, in my opinion, the conviction is general that the measures adopted by government have not produced, and cannot produce, the expected beneficial effect.

As to what is before us, Sir, my opinion is, we are to look forward to a summer and autumn of very great difficulty. There may be occasional and temporary relaxations of suffering, but there can be no permanent relief. Men of capital will be alarmed; active men of business will be timid; those who have any thing will rather seek to secure it, than to hazard it in the attempt to make more. Employment will be scarce, wages low, and above all, or rather, perhaps, as the cause of all, a want of confidence, an uncertainty about the future, a distrust in the currency, and a distrust in government, will continue to paralyze the whole community.

If we break up here, having done nothing, we shall go home to meet nothing but complaints and trouble. Can any of these advocates of "experiments" tell me how the condition of the country is to be changed for the better before the next meeting of Congress? How is business to revive? How is occupation for the laboring classes to be obtained? How is commerce to be extended? How is internal trade, especially, to regain its facilities and advantages? How are exchanges to be reëstablished? And what is to become of the revenue? Will gentlemen longer sleep over this last subject? Do they not now see, that the Secretary's estimates cannot be realized? Sir, the honorable member from Kentucky has called for an account of the receipts at the treasury for the year, thus far. When those accounts come, they will open gentlemen's eyes; they will show sad disappointment. I cannot speak with precision as to the extent of defalcation, but I do not speak altogether at random when I give my opinion on this subject. From the best lights I can obtain, there will be a deficiency in the receipts of the customs of at least one third of the expected amount; perhaps

nearer to a moiety than to a third. Such is the direct effect of the *experiment* upon the finances of the country. Having, Sir, expressed these opinions, there are others, also, which I think it right to state.

With all respect, Sir, to both houses of Congress, and notwithstanding all that we hear, in one or the other, against the power to create a bank, I am fully of opinion, nevertheless, that two thirds of each house are convinced of these two propositions: First, that a national bank is constitutional; second, that a national bank, in the present state of things, is indispensable. This may appear inconsistent with what has taken place, but I fully believe it is all true. This paradox, if it appear to be one, is easily explained by considering the circumstances which may, and which do, control the actions of public men. One question gets mixed with another; opinions give way to notions of present expediency; and the consequences of appearing to give way and abandon a favorite course of policy are more feared than all other consequences. Sir, if the executive would but signify his assent to such a proceeding, we should recharter the Bank of the United States, at least for a short time, restore the deposits, and go home to the people in three weeks.

We sometimes hear intimations thrown out, that the administration may itself yet propose a bank; some sort of a bank; a bank not on the usual principles, but on some new principles. "New principles," it is frequently said, are to be applied to the case. I am not aware, Sir, from my own reading or observation, that any *new principles* in banking have been discovered, at home or abroad, for the last quarter or half a century, unless it be that certain notions which have been suggested among us, some time since, and recently, but never adopted, may be called new principles. I will advert to some of them.

One is, that we may create a bank, with a large capital, and establish it in this District; not for the convenience of the people here, but for the benefit of the whole United States. Now, Sir, he must have singular ideas of constitutional law, who denies that Congress can make a bank at Philadelphia, with branches in other States, and yet contends that it may establish a bank here, which may send its branches into all the States. And as to a bank with a large capital here, where there is so little commerce, with no branches in the large cities, where com

merce does exist, the notion is too preposterous to need refutation. This "new principle," then, Sir, be assured, will not be carried into operation.

There is another "new principle"; and that is, to establish a bank on the funds in the treasury. It is hardly necessary to say that the time for this, if there ever was a time favorable to so crude and so dangerous a project, has quite gone by.

We have had, too, Sir, at different periods in our history, suggestions favorable to the exemption of banks from liability to pay their notes in specie; in other words, favorable to a sheer, confessed paper-money system. These suggestions, it may be, have become part of the "new principles," which it is intended shortly to exemplify. The country, I trust, will not run into any such folly.

Again, I have heard it said, that, although there may be a bank hereafter, yet it must be a bank in which the government, that is, the executive, shall have direct participation and control. I need hardly say, that, for one, I shall not consent to any such project for extending executive influence. I shall not agree to make a very bad bank, for the sake of making a very dangerous government. In short, Sir, I reject and repudiate all these new principles. I shall set my face against all banks but a specie-paying bank, a hard-money bank, a well regulated and well constituted bank, established on principles safe to the government and safe to the people. If we cannot have such a bank, the next best thing will be to have none. Gentlemen may set their hearts at rest, Sir, about all these new projects. The country is too wise, it has already had too much taste of *experiments*, to countenance any one of them. If there be not a sound bank, a safe bank, a bank independent of executive control, there will, for the present at least, be no bank at all.

I have only a few words more to say, Sir. We are already far advanced in the session. The heats of summer are approaching; and what is to be done? Is the administration prepared to see the session break up, and members go home, leaving these things as they are? Is such the intention of the executive? Is such the intention of members who support the executive? I still remain of the opinion formerly expressed, that it is our absolute duty to adopt some measure of relief, before we leave our seats. But the responsibility is not on us. The Sen-

ate can do nothing. We are not responsible either for the present or for future difficulties.

We have not brought about this state of things; we have not removed the deposits; we have not broken the plighted faith of government; we have not deranged the currency; we have not shaken credit and confidence; we have not brought on failures, bankruptcies, and ruin; we have not obstructed trade; we have not checked manufactures; we have not starved labor; we have not impoverished the treasury. It is for those *who have changed the state of things*, it is for those *whose political acts have placed the country in the condition it now is in*, to take and to bear the responsibility. When we foretold this, we were derided as prophets false or prophets ignorant; complaints of distress have heretofore only produced sneers, sarcasms, and attempts, poor attempts indeed, at ridicule. But the evil has come in a shape too formidable to be disregarded. Here it is; and how do its authors intend to deal with it? Sir, I am as anxious as any member can be to go home. I stay here at great inconvenience and sacrifice; but I am willing to stay till the last hope of doing any thing useful has faded away. I will stay till the dog-days come, if it promise benefit. If the administration has any thing to propose, I will stay and hear it. If it meditates any measure of relief, I am willing to wait the result of its meditation. I hope, therefore, gentlemen will tell us, I call on them to tell us, whether the executive has any thing further to propose. Does it desire the prolongation of the session? Has it any thing, or does it expect to have any thing, to submit to us? The friends of the executive have the power. They have, too, the responsibility. They reject every thing which we think useful; and they propose no change from our present condition. They can relieve the country at once, if they choose. If they will but sacrifice their own prejudices, their stiff adherence to their own opinions and purposes, on the altar of the public good, they could relieve the country in three weeks. It is for them to decide whether this sacrifice shall be made. And I now repeat, Sir, and it is the last remark with which I shall trouble you, that, unless some efficient measure be adopted before we separate, we have a summer and fall before us such as this country has not experienced.

In the Senate, on Tuesday, June 3d, Mr. McKean presented the memorial of the Pennsylvania State Convention, assembled at Harrisburg, May 27th, 1834, introducing it with appropriate remarks. The memorial having been read, Mr. Webster rose and addressed the Senate.

MR. PRESIDENT, — Is this the voice of Pennsylvania? That is a question of very great interest at the present moment. The whole country has a concern in it. *Is this the voice of Pennsylvania?* If this be her voice, then we may hope that the day of relief and of safety is approaching. If this be her voice, it is a voice of help and of rescue. The work of relief will prosper, it will proceed, if her heart be in it, and her strong hand be put to it. Pennsylvania is one of those great central States, on whose determination and on whose conduct every thing in regard to the future condition of the country seems to hang. If this centre moves with intelligence, union, and patriotism, nothing can resist its force. For one, I believe that the sentiments expressed in this memorial are, to a very great extent, the sentiments of Pennsylvania. I believe this is HER VOICE. The proofs, I think, are satisfactory. They come in numerous expressions of opinion, in a thousand forms, from all parts of the State itself; and they may be gathered from the workings of public opinion in other portions of the country. In this hall and the other, I see evidence, if I mistake not, that those who know Pennsylvania best believe her to entertain the opinions expressed in the paper which has now been read, and believe, also, that she will soon show herself in earnest in maintaining them. She has been an ardent friend and a steady supporter of the present chief magistrate. Among the very first to espouse his cause, from warm gratitude for his great services, a strong conviction of his honesty and patriotism, and a confiding trust in his ability to administer the government, she has adhered faithfully to her attachment. Three times she has given him her vote for the Presidency, and she has not faltered in her support heretofore, although there have been measures, touching her vital interests, in which nearly every one of her delegation here, and a vast majority of her own legislature, have been constrained to differ from the President. She has seen and regretted what she thought errors; but she has remembered great services and great exploits, and has gone on with her characteristic steadiness. It is not wonderful that she should be slow and

reluctant in withdrawing confidence where she had bestowed it in such bountiful measure. I would not suggest, that, even now, Pennsylvania abates her personal kindness and regard for the chief magistrate who has been so often the man of her choice. No doubt she would desire to see him go through his career with success and honor; but I believe, Sir, that her citizens perceive the true character and feel the disastrous effects of those measures which the administration has been recently led to adopt, and that they are convinced that it is their duty to oppose those measures by every thing which belongs to their interest and to their character as Pennsylvanians. In all this it is possible I may be deceived. The sentiment of Pennsylvania may be fixed the other way. My hopes, my earnest wishes, may mislead me; but I shall not give up those hopes while it is possible to retain them, because they are intimately connected with all the expectations which I cherish for a return of the prosperity of the country.

Mr. President, the immediate difficulty in our condition is to convince the friends of the administration here, and the President himself, that the country is either dissatisfied or distressed. The pertinacity with which men here cling to this "experiment" exceeds all former experience. They can see no proof of distress, they can hear no sounds of just complaint. They insist that all the excitement which exists in the country is produced by the *bank*, by *panic-makers*, by *party politicians*. All the memorials come, they say, from the President's enemies. If we stand up here to present the petitions of the people, and to press them on the attention of the Senate, we are called panic-makers! If we speak of the multitudes who flock together, at public meetings, to memorialize Congress, we are told they are all bank agents. Farmers, mechanics, laborers, traders, manufacturers, and merchants come here by hundreds of thousands; but we are told they are but a few noisy political partisans. Sir, an end to this delusion must some time come. It cannot last for ever; and if any thing short of an overwhelming defeat at the ballot-boxes will ever convince the supporters of the present measures that the people are against them, they might be, in some degree, satisfied by the character of this convention at Harrisburg, the circumstances attending it, and the result of its proceedings. It was a convention consisting of two hundred

and fifty delegates, coming from forty-four counties out of fifty-two which the State contains. These delegates assembled, Sir, from places some of them three hundred miles apart, at a very busy season of the year, in obedience to the will of their constituents, for the purpose of consulting on the present state of things, and uniting to pray relief from Congress. I have the honor of knowing several of these gentlemen personally, and many others by reputation. The convention was not composed altogether of delegates from any one political party. Various parties, various descriptions of political men, united in its proceedings.

It is known that there exists in Pennsylvania a large, active, and zealous Antimasonic party; and I see, among the members of the meeting, many distinguished names belonging to that party. These gentlemen came to the convention, not to lose their own distinct character, not to give up their own principles of association, but to signify that, in this crisis, and on the great questions which now agitate the whole country, they think as others think, and as Americans ought to think, and that they hold fast to the Constitution and laws.

Sir, I am happy to say, that I know no party or body of citizens in the country, whose principles and opinions, on all its leading interests, are more thoroughly sound and patriotic than those of the Antimasons of Pennsylvania. I know no gentlemen more worthy of trust, in every respect, than those who are placed in the public councils here by their influence and their votes. It is true, that the party has a distinct object of its own, which it keeps constantly in sight, and which it pursues with steadiness and zeal; but it is equally true, that it shows itself always unwavering and steadfast in its attachment to the Constitution, in its maintenance of the authority of law, in its love of liberty, and in its support of the great interests and true policy of the country.

The Whigs, Sir, were also represented in this convention, and it will be seen by its proceedings that they have avowed sentiments and principles worthy of their name. Nor are these all. It appears, also, from the memorial itself, that nearly one third of the whole convention was composed of friends and supporters of the present executive. Seventy-five Jackson men, as they have been called, are on the roll of members. Will not

this striking fact produce its effect on gentlemen here? Will it not cause them to open their eyes to the progress of opinion, and their minds to the force of truth? You will observe, Sir, that this convention did not call itself a *Whig* convention, a *National Republican* convention, nor an *Antimasonic* convention; but it called itself a "convention of delegates from the citizens of Pennsylvania opposed to executive usurpation and abuse." It adopted a name, or used a description, broad enough to comprehend all those who, however they might differ in other things, united in the objects of this meeting. Now, Sir, how is it possible that so numerous and respectable a convention, thus composed of gentlemen belonging to distinct parties and to different political associations, could be brought together, and be found adopting this memorial, with entire unanimity, if there were not some strong conviction common to all, some general and concurring sense of public distress and public danger?

Sir, they have acted wisely and patriotically; they have remembered that they have a common country, a common liberty, and, in times of danger, a common duty. They have felt, that, whatever else they may be, they are yet all Americans, all Pennsylvanians, all lovers of liberty and the Constitution. The administration is deceived, therefore, Sir, the President himself is deceived, greatly, if he supposes this convention to have been assembled by the agency of the bank, by any mere party operation, or by any desire to create panic. Let us look to individuals, let us see who composed the convention, that we may judge the better of the weight due both to its declarations and its opinions.

I perceive, Sir, that there was placed in its chair a WASHINGTON COUNTY FARMER, Joseph Lawrence, a man well known in this Capitol; a man of the simplest republican habits, and the sternest republican virtues; a man who has served his fellow-citizens in distinguished public stations with much credit, and has gone back to the cultivation of his own farm with *real* Roman simplicity. Sir, all the banks in the world, and all the panic-makers and political partisans in the world, could not bring him over the Alleghanies to Harrisburg, there to put his name to a paper containing these sentiments and these statements, unless he fully believed them all to be true.

In the preliminary arrangements of the meeting, and also in

its subsequent proceedings, I observe that General Frick, of Northumberland, acted a conspicuous part. If I have been rightly informed, this gentleman has been a distinguished friend of the present chief magistrate, and has supported him and his measures with ability, both in and out of the legislature of Pennsylvania. Is it panic, is it party spleen, is it ill-will to the President, which brought this highly respectable gentleman, and others like him, to the convention? Certainly it is not. Nobody can believe it is. They were brought thither, and could only be brought thither, by that sense of duty which is stronger than personal preference; by that true love of country which places principles above men. Would they not stand by the President if they could? Popular as he still is, powerful as he is, would they not go on in their support of his measures if insurmountable obstacles were not in the way?

There is another circumstance, Sir, in the character of this convention, worthy of especial notice. Among its members were several who belong to that highly respectable portion of our fellow-citizens, the Society of Friends. With one of them, a member of the committee who brings this memorial to Congress, a most worthy and respectable gentleman, I have the pleasure of some personal acquaintance. He is advancing far into age; and yet he never attended a political meeting in his whole life, until he went, with others of his Society, last week, to Harrisburg. When, Sir, were the Society of Friends found to be political agitators, ambitious partisans, or panic-makers? When have they disturbed the community with false cries of public danger, or joined in any clamor against just, and wise, and constitutional government? Sir, if there be any political fault fairly imputable to the Friends, I think it is rather, if they will allow me to say so, that they are sometimes a little too indifferent about the exercise of their political rights; a little too ready to leave all matters respecting government in the hands of others. Not ambitious, usually, of honor or office, but peaceable and industrious, they desire only the safety of liberty, civil and religious, the security of property, and the protection of honest labor. All they ask of government is, that it be wisely and safely administered. They are not desirous to interfere in its administration. Yet, Sir, a crisis can move them; and they think a crisis now exists. They bow down to nothing human

which raises its head higher than the Constitution, or above the laws.

Such, Sir, is the character, the composition, of this convention. I beseech gentlemen not to deceive either themselves or others, by referring all its proceedings to party influence and bank influence. Depend on it, Sir, it had its origin, and owes its character, to a deep feeling of dissatisfaction with measures of government, a conviction of much public distress, and an honest alarm at executive claims of power. And depend on it, Sir, if these and other admonitions are not taken in time, if nothing be done to quiet apprehension and to relieve the country, the sentiments of this convention will become, and must become, more and more general among the people.

This memorial, Mr. President, declares that the cherished policy of Pennsylvania, consisting of an encouragement of her manufactures, has become impracticable and delusive; that numerous establishments are closed, and others crippled; that the loss of property has been afflicting; and that the suspension of business deprives *labor* of wages and of bread. Is this true? Is this representation fact, or fiction? Have two hundred and fifty gentlemen been sent to Harrisburg, by their friends and neighbors, that they may raise a false cry, put statements upon paper which are not true, and send thirty of their own number to Washington, to impose on Congress with a pretended but false story of distress?

The memorial speaks of Pittsburg. It is now within a few days of twelve months, since, for the first time, I visited that city, so interesting by its position, by its rapid growth, by the character of its inhabitants, and by the history of early occurrences in its neighborhood. It was then all animation, activity, and cheerfulness. If the smoke of numerous factories and workshops somewhat darkened the air and obscured the view of the charming scenery around, it gave evidence, still, that occupations were prosperous, and that *labor* was well paid, and happy in its daily toil. Of thirty thousand inhabitants it is said two thirds of them owe their means of livelihood to manufactures; and it may be asked, with emphasis, and with alarm, unless activity be restored again to the loom and the forge, what is to become of this amount of human strength and industry, thus thrown out of employment? The memorial goes on to say,

that the great staples of the State are without a market, that many of its mines are nearly or quite abandoned; that the manufactures of iron and cotton have fallen off one third; and the products of the field sell only at reduced prices, when they sell at all. "Turn where we will," it continues, "your memorialists perceive one universal sense of present or impending ruin, depressing the energies and darkening the prospects of the citizen."

Now, Sir, if these statements, put deliberately on paper by this convention, and brought hither by its committee, will not convince the administration and its friends of the fact of dissatisfaction and distress among the people, all effort to produce conviction must fail. We are indeed, I fear, attempting a hopeless task. All fact and all reasoning seem to fall powerless on the unimpressible, impenetrable surface of party opinion. Every blow, however often repeated, rebounds from it as from the face of an anvil. Men have become so committed, they have so far stepped in already, all their hopes are so entirely pledged and staked on the success of this grand "experiment," that any change of purpose appears to be out of the question.

I can only repeat, therefore, Sir, what I have so often said, that I entertain faint hopes of relief, till public opinion shall produce it, by some change of public agents. The authors of this experiment have made up their minds to share its fate, to float with it, if they can keep it above water, and to sink with it, if it must go down. They still cry out that all is well, all is safe, all is prosperous, all is glorious; and argument, experience, the importunity, even the supplications, of the people, have no more influence than the idle wind.

Sir, I am happy to believe, as I do believe, that the citizens of the great State of Pennsylvania are awaking to a just sense of the condition of the country. Since all our fortunes are so much connected with her own; since all that she does, and all that she omits to do, may affect the happiness of every man, not only within her own limits, but in all the other States; it is natural that the whole country should regard her with interest. I doubt not, Sir, she will examine the conduct of government, and take counsel with her own thoughts about the security of the Constitution, and the preservation of the authority of the laws. I doubt not that she will well consider the present, and

look to the future; and if she finds all well, and all safe, if she feels no evil and perceives no danger, she will repose in her accustomed tranquillity. But if she feels that evil, and great evil, does exist, and if she sees that danger is before the country, it is not to be doubted that she will bring to the crisis her intelligence, her patriotism, and her power.

In acquiring the liberty which we enjoy, she had her full share both of the sacrifice and the glory; and she knows that that rich possession is held only on the condition of watchfulness and vigilance. God grants liberty only to those who love it, and are always ready to guard and defend it. In establishing our admirable Constitution, she bore a leading part, and contributed to the counsels which framed it the wisdom of Franklin, and Morris, and Wilson. None can have a deeper stake in the preservation of this Constitution than the citizens of Pennsylvania; and I verily believe that none are more strongly attached to its true principles. It is natural, therefore, that those who think that high principles or great interests are in danger should look to her for succor.

If, as this memorial alleges, the manufacturing industry of the country is depressed and suffering, if it be discouraged, crippled, and threatened with ruin, who shall save it, if Pennsylvania shall not aid in its rescue? Where will it find support, if she abandon it? We have followed her lead in fostering manufactures and sustaining domestic industry, believing this to be a part of her settled policy, interwoven with her system, and that her purposes in regard to it were fixed and settled. I still think so; and therefore I cannot readily believe that she will approve measures which undo all that has been done, or counteract its good effect.

Above all, Sir, I cannot believe that the political doctrines of the times can stand a chance for adoption in Pennsylvania. I cannot believe that men who have been educated in that school, which has been called emphatically the Democratic school, and who hold their political opinions in common with McKean, and Snyder, and William Findlay, will have a relish for the sentiments of the Protest.* When they are asked, Who ought to

* On the 28th of March, 1834, the Senate adopted a resolution declaring that "in the late executive proceedings in relation to the public revenue, the President had assumed a power not conferred by the Constitution and laws, but in dero-

hold the public purse? I think they will not agree with the Protest in their answer. Nor has it ever been taught for doctrine, in the school of which they are disciples, that the executive power is the natural guardian of liberty, and that it is not for the representatives of the people, or the representatives of the States, to question its acts, or to proclaim its encroachments. Sir, Pennsylvania is deeply interested in that in which we are all interested, THE WELFARE OF THE WHOLE; and if she be true to herself, as I trust she will be, she cannot be false to the country.

Mr. President, we are approaching to the end of a long session, and we are likely to leave off where we began. We have done nothing, and I fear we shall do nothing, for the relief of the people. The government has nothing to propose which even its own friends will support. On what does it rely? A proposition is before the other house, which has been represented as the only scheme of the administration. It is a law for keeping the public treasures in the State banks. It was offered here, the other day, as you remember, Sir, by way of amendment to a bill, and was rejected by more than two thirds. It is put to rest here; nor is its sleep elsewhere likely to be disturbed.

The administration will not consent that the deposits be restored; it will not consent to give the present bank time to collect its debts and wind up its affairs without distressing the people; it will not consent to prolong its existence a single day; it will not consent to any new bank; it will not suffer the public money to depart, in any way, from executive control. It sees employment cut off, but it does nothing to restore it; it sees confidence destroyed, but it does nothing to revive it; it sees the revenue diminished, and dwindling, but it does nothing to improve it. And yet it would appear, that the administration is now desirous that Congress should adjourn and go home. For one, I feel that Congress has not done its duty; it has not fulfilled the objects of the session; it has done nothing to relieve the country.

The responsibility, Sir, must rest where it ought to rest; and we must prepare ourselves, as best we may, to account to the

gation of both." On the 17th of April, a Protest against this resolution was sent to the Senate by the President of the United States, with a request that it should "be entered at length on the journals of the Senate."

people for the disappointment of their just hopes, and the disastrous consequences of rash, unlawful, ill-advised measures of government.

Mr. President, I hardly intended, when I rose, to occupy more than a moment of the time of the Senate. I know how many important subjects are upon the table. But this one subject, the general condition of the country, is so superior to all, it is of such overwhelming importance, that every thing else necessarily gives way to it. It has been so through the session; it will be so next session; and it will continue to be so, till the Constitution shall be vindicated, the violated law redressed, the public treasures restored to their proper custody, and general confidence reestablished. How soon this may be done, it remains with the people themselves to decide; but until it is done, and all done, we shall look in vain, either for an end to distraction in the public councils, or an end to embarrassment and suffering among the people.

Report on the Removal of the Deposits*

IN Senate of the United States, February 5, 1834, Mr. Webster, from the Committee on Finance, made the following report:—

THE Committee on Finance, to whom has been referred the report of the Secretary of the Treasury of the 3d of December, 1833, on the removal of the public deposits from the Bank of the United States, and a resolution, submitted to the Senate by an honorable member from Kentucky, declaring that the reasons assigned by the Secretary for the removal of the said deposits are unsatisfactory and insufficient, have agreed on the following report:—

THE act incorporating the Bank of the United States, as is justly remarked by the Secretary, is a contract, containing stipulations on the part of the government, and on the part of the corporation, entered into for full and adequate consideration.

The government became party to this contract by granting the charter, and the stockholders by accepting it. “In consideration,” says the charter, “of the exclusive privileges and benefits conferred by this act on the said bank, the president and directors thereof shall pay to the United States, out of the corporate funds thereof, one million and five hundred thousand dollars, in three equal payments”; and in another section it declares that, “during the continuance of this act, and whenever required by the Secretary of the Treasury, the said corporation shall give the necessary facilities for transferring the public funds from place to place within the United States or the territories thereof,

* A Report on the Removal of the Deposits, made by Mr. Webster, from the Committee on Finance of the Senate of the United States, on the 5th of February, 1834.

and for distributing the same in payment of the public creditors, without charging commissions or claiming allowance on account of difference of exchange; and shall do and perform the several and respective duties of the commissioners of loans for the several States, or any one or more of them, whenever required by law."

The section immediately following this provision is in these words: "*And be it further enacted*, That the deposits of the money of the United States, in places in which the said bank or branches thereof may be established, shall be made in said bank or branches thereof, unless the Secretary of the Treasury shall at any time otherwise order and direct; in which case the Secretary of the Treasury shall immediately lay before Congress, if in session, and if not, immediately after the commencement of the next session, the reasons for such order or direction."

It is not to be denied or doubted, that this custody of the public deposits was one of the "benefits" conferred on the bank by the charter, in consideration of the money paid and the services undertaken to be performed by the bank to the government; and to this custody the bank has a just right, unless such causes have arisen as may have justified the Secretary in giving an order and direction for changing that custody. Any order, therefore, issued under the provisions of this law, necessarily involves a consideration of the just extent of the Secretary's power and of the rights of the bank.

But Congress, in making this provision, unquestionably had in view the safety of the public funds, and certain important financial objects, as well as the making of a just consideration to the bank for the sum paid and the services undertaken by it; and with this view, also, it has expressed its will that the deposits shall continue to be made in the bank until good cause shall arise for ordering otherwise. Of this good cause, the Secretary of the Treasury in the first instance, and Congress ultimately and conclusively, are constituted the judges. Every order, therefore, of the Secretary for changing the deposits presents for the examination of Congress a question of general political propriety and expediency, as well as a question of right and obligation to the bank.

These questions may be considered together. They are intimately connected; because the right of the bank to retain the

deposits, and to enjoy the advantages to be derived therefrom, cannot be denied, unless a case is shown to have arisen within the just power of removal vested in the Secretary, and which made it his duty to exercise that power. The Secretary is only to remove the deposits for reasons. Of these reasons he is to give an account to Congress. If they be insufficient to justify the removal, the bank has a right to a return of the deposits, and the country has a right also to expect that, in that case, the public treasure will be restored to its former place of safety.

The Secretary having removed the deposits, and having reported his reasons to both houses, the whole subject is now before Congress by way of appeal from his decision; and the question is, whether that decision ought to stand, or ought to be reversed.

The power of the Secretary, under the law, is evidently but provisional. It is a power which he may exercise in the first instance; but the propriety of his conduct, in every instance of its exercise, is ultimately referred to the wisdom of Congress, and by Congress it must be judged. He is authorized to do the act, but Congress is to examine it when done, and to confirm or reverse it. The Secretary may change the deposits; but, when changed, Congress is to decide on the causes of such change, with authority either to sanction the removal, or to restore the deposits, according to its own judgment of right and expediency.

In order to decide whether the act of the Secretary ought to be confirmed, it is requisite, in the first place, to form a just opinion of the true extent of his power under the law; and, in the second place, to consider the validity of the reasons which he has specially assigned for the exercise of that power in the present case.

The opinion of the Secretary is, that his power over the deposits, so far as respects the rights of the bank, is not limited to any particular contingencies, but is absolute and unconditional. If it be absolute and unconditional so far as respects the rights of the bank, it must be absolute and unconditional in all other respects; because it is obvious, if there be any limitation, that such limitation is imposed as much for the benefit of the bank as for the security of the country. The bank has contracted for the keeping of the public moneys, and paid for it as for a privi-

lege or benefit. It has agreed, at the same time, that the Secretary shall possess the power of removal; but then it is also agreed, that, whenever this power is exercised, the reasons therefor shall be reported to Congress; Congress being thus constituted the final judge, as well of the rights of the bank in this particular, as of the good of the country. So that, if the Secretary's power be in truth absolute and unconditional, it restrains Congress from judging whether the public good is injured by the removal, just as much as it restrains it from judging whether the rights of the bank are injured by the removal; because the limitation, if any, is equally for the security of the bank and of the public.

If the bank be interested in retaining the deposits, then it is interested in the truth or falsity, in the sufficiency or insufficiency, of the reasons given for their removal. Especially is it so interested, since these reasons are to be rendered to a tribunal which is to judge over the Secretary, and may form a different opinion on the validity of these reasons, and may reverse his decision. It clearly has an interest in retaining the deposits, and therefore is as clearly concerned in the reasons which the Secretary may give for their removal. And as he is bound to give reasons, this very circumstance shows that his authority is not absolute and unconditional; for how can an appeal be given from the decision of an absolute power? and how can such a power be called on to give reasons for any instance of its exercise? If it be absolute, its only reason is a reference to its own will.

The committee think, therefore, that no absolute and unconditional power was conferred on the Secretary; that no authority was given him by which he could deprive the bank of the custody of the public moneys, without reason; and that therefore his opinion is not to be admitted; that in no event can any order for removing the deposits impair the right secured to the bank by the charter. If removed without good cause, the committee think the removal does impair the rights of the bank.

But the opinion of the Secretary, as to his own powers, is hardly more limited in respect to the government and the country, than in regard to the rights of the bank. His opinion is, that it is his duty, and within his authority, in this view, also, to withdraw the deposits of the public money from the bank whenever such a change would, in any degree, promote the public

interest. "The safety of the deposits," he says, "the ability of the bank to meet its engagements, its fidelity in the performance of its obligations, are only a part of the considerations by which his judgment must be guided. The general interest and convenience of the people must regulate his conduct."

By the general interest and convenience of the people, the Secretary can only mean his own sense of that interest and convenience, because they are no otherwise to be ascertained than by his own judgment. His construction of the law is, therefore, that he has power to remove the deposits whenever, for any reason, he thinks the public good requires it. In this interpretation of the design and object of the law, and this broad construction of the Secretary's power, the committee do not concur. Although the power of the Secretary is not restricted by any express words or terms, nor by any particular occasions for its exercise specifically and expressly designated or prescribed by the law, yet it is not to be admitted, as the committee think, that this power is to be exercised capriciously, or in an arbitrary manner, or for loose or conjectural reasons, or on any idea of an unlimited discretion vested in the Secretary to judge on the general question of the public welfare; or, indeed, on any other grounds than those of necessity, or plain and manifest expediency, directly connected with the subject over which the power exists.

The keeping of the public money is not a matter which is left, or was intended to be left, at the will of the Secretary, or any other officer of the government. This public money has a place fixed by law, and settled by contract; and this place is the Bank of the United States. In this place it is to remain until some event occur requiring its removal. To remove it, therefore, from this place, without the occurrence of just cause, is to thwart the end and design of the law, defeat the will of Congress, and violate the contract into which the government has solemnly entered.

It is fit to be observed, that no other law confers on the Secretary such a wide discretion over the public interests in regard to any subject, or gives him a power to act on the rights of others, or on the rights of the public, in any part of his official duties, with so unlimited an authority as is here asserted. Everywhere else he appears in the character of a limited and restricted

agent. He is the financial officer of the government; he is the head of the Department of the Treasury. His duty is, to report annually to Congress the state of the finances, and to communicate to either house, when requested, any information respecting the treasury; and he is to superintend the collection of the revenue. But he has no authority over the circulating medium of the country, either metallic or paper; nor has he the control of the national currency. It is no part of his duty either to contract or expand the circulation of bank paper, nor in any other way to exercise a general superintendence over the money system of the country. These general interests of the government and the people are not confided to his hands by any of the laws which created his office, and have prescribed his duties; and the committee are of opinion, that the charter of the bank no more intended to give such a wide scope to the Secretary in regard to the deposits, than other laws intended to give him the same wide scope in respect to other duties of his office. No intimation of such intention is found either in the charter itself, or in any of the legislative debates which took place in both houses when the bank was established, or in the discussions which have been had on the various occasions which have been more recently presented for calling forth the sentiment of Congress. In none of these sources is there to be found any proof that the legislature has delegated, or intended to delegate, this extraordinary power of judging of the general interest of the people to the Secretary of the Treasury. Such a power, did he possess it, would necessarily make him the general superintendent of all the proceedings of the bank; because it would enable him to compel the bank to conform all its operations to his pleasure, under penalty of suffering a removal of the public moneys. This would be little less than placing all the substantial power of managing the bank in his hands. But he is not by law its manager, nor one of its managers; nor has he any right, in any form, to interfere in its management. On the contrary, the very language of the charter rejects all idea of such general supervision over its concerns by him, or any other officer of government. That language is, that, "*for the management of the affairs of the corporation*, there shall be twenty-five directors annually chosen"; and, under the restrictions contained in the charter, these directors are intrusted with the whole general business of the bank,

subject, of course, to all the provisions of the charter and the by-laws; subject, too, always to the inspection and examination of either house of Congress; subject always to regular inquiry and trial; and bound always to communicate to the head of the treasury department, on request, statements of its amount of stock, debts due, moneys deposited, notes in circulation, and specie on hand.

Under these restrictions, the establishment of its offices, and the appointment of its officers; the amount of its discounts, and every thing respecting those discounts; its purchases and sales of exchange, and all other concerns of the institution, are to be conducted and managed by the directors. There is nothing in the charter giving the slightest authority to the Secretary to decide, as between the bank on the one hand, and the government or the people on the other, whether the general management of the directors is wise or unwise; or whether, in regard to matters not connected with the deposits, it has or has not violated the conditions of its charter. The statement which the bank is bound to make to the Secretary, he may lay before Congress; and he is doubtless bound by his official duty to communicate to Congress any other information in his possession, tending, in his judgment, to show that the bank has disregarded its charter, or failed to fulfil all or any of its duties; but here his authority, so far as it regards the general course and operation of the bank, ends. It is then for Congress to act, if it see occasion, and to adopt the regular remedies for any evils which it may suppose to exist. But it transcends the power of Congress itself to pronounce the charter violated, without hearing, without trial, without judgment; far less is any such power of pronouncing final judgment confided to the Secretary. His power simply is, that, in regard to the deposits of the public money, he is to judge, in the first instance, whether just cause has arisen for their removal.

The Secretary seems to suppose, indeed the very basis of his argument assumes, that the law has confided to him a general guardianship over the public welfare, so far as that welfare is in any way connected with the bank, or liable to be affected by its proceedings; and that he holds the power of removing the deposits as the means or instrument by which he is to enforce his own opinions respecting that welfare. The committee do not

adopt this opinion. They think that, if such had been the design of the law, its provisions would have been very different from those which it does actually contain.

If such general guardianship had been intended to be conferred on the Secretary, it is reasonable to believe that he would have been vested with powers more suitable to such a high trust. If he had been made, or intended to be made, general inspector or superintendent, other authority than merely that of removing the deposits would have been given him; for this plain reason, that the government and the country have interests of much magnitude connected with the bank, besides the deposits of the public moneys in its vaults; and to which interests, if endangered, the removal of the deposits would bring no security.

The government is proprietor of seven millions of the stock of the bank; and yet no authority is given to the Secretary to sell this stock under any circumstances whatever, or in any other way to interfere with it. The bills and notes of the bank are made receivable in all payments to the United States, until Congress shall otherwise order; and no power is given to the Secretary to prevent their being so received, either during the session of Congress or in its recess, however the credit of these bills and notes might become depreciated. How is it possible to conceive that, if Congress intended to give to the Secretary a general right to judge of the operations and proceedings of the bank, and a power, of course, to declare when it had violated its duty, and was no longer trustworthy, it should yet leave him under an absolute obligation to receive its bills and notes in all payments to the treasury, though they might have lost all credit, and place no means in his hands to execute his high authority of superintendent, except the mere power of removing the deposits of the public money?

Wherever it is clear that Congress has given the Secretary a power, it has given him the means of informing his judgment as to the propriety of exercising that power. He has power to remove the deposits; and ample means are afforded him by which he may learn, from time to time, whether those deposits are safe. For this purpose, it is expressly made the duty of the bank to furnish him, as often as he shall require, if not oftener than once a week, with statements of the amount of the capital

stock of the corporation, of the debts due to it, of the moneys deposited in it, of its notes in circulation, and specie on hand; and he has a right to inspect the general accounts in the books of the bank relating to this statement. This statement enables him to judge of the solvency and stability of the bank, and of the safety of the public money deposited in it. Here, then, is a power, and all appropriate means given for the just and enlightened exercise of that power. Confined to the deposits, the power is accompanied with all rational auxiliaries and attendants.

But for the depreciation of the bills of the bank, should that happen, and for other cases of maladministration, Congress has provided just and appropriate remedies, to be applied by itself or others, in exclusion of the Secretary. For redress of these evils, no power is given to him. For the security of the public interest, the law reserves a right to either house of Congress to inquire, at all times, into the proceedings of the bank; and if, on such inquiry, it appears in any respect to have violated its charter, Congress may bring it to trial and judgment. Power is given to the President, also, to institute judicial proceedings, if he shall have reason to believe that any such violation has taken place. But no such power is given to the Secretary.

The proposition, then, cannot be maintained, that Congress has relied, for the security of the public interests and the preservation of the general welfare, so far as it is connected with the bank, on a general discretion reposed in the Secretary, for two reasons;—first, because it has not given him the appropriate powers of remedy in the most important instances; and secondly, because it has in those instances either expressly reserved those powers to itself, or expressly conferred them on the President.

If the Secretary cannot prevent the notes of the bank from being received at the custom-houses and the land-offices, even after they should be discredited; if he have no power to touch, in any way, the seven millions of stock belonging to the government; if the power of examination into the proceedings of the bank be given, not to him, but to either house of Congress; if he have no power, but Congress and the President each has power, to direct a legal investigation into the conduct of the bank,—how can it possibly be maintained that a general in-

spection and guardianship over the public welfare, so far as it is connected with the bank, is confided to him; and that his authority to remove the deposits was given, not to protect the deposits themselves, and secure their proper use, but to enable him to enforce upon the bank, under penalty of their removal, such a course of management as his sense of the public interest and of the convenience of the people may require? Such a construction would give a strange and an undeserved character to the provisions of the law by which the bank was created. It would convert the power of removal, intended for remedy and redress, into a mere instrument of punishment; and it would authorize the infliction of that punishment, without hearing or trial, in the very cases in which the law yet says, that, if violation of duty be charged, the charge shall be heard and tried before judgment is pronounced; and the duty of preferring this charge, and of prosecuting it to judgment, is given, not to the Secretary, but to Congress and to the President.

The contingent power given to the Secretary to remove the deposits evidently shows that Congress contemplated the possibility that some sudden evil might happen, for which either no other remedy was provided, or none which could be applied with sufficient promptitude; and for which evil, removal would be a just and appropriate remedy. The remedy prescribed, then, teaches us the nature of the evils which were apprehended. We can readily understand that threatened danger to the funds was one, and probably the chief, of those evils; because change into other hands is the ready and appropriate measure which would rationally suggest itself to all minds as the proper security against such danger; and change is the remedy actually prescribed. Neglect to transfer the deposits from one place to another, as the exigencies of government might require, and thereby to furnish those facilities of exchange which the charter demands of the bank without commission and without charge, is another evil, for which, should it happen, the remedy would naturally be the withdrawing of the funds and the placing of them in their former custody, so that they could be transferred or exchanged by the treasury itself.

But who can see any connection or relation, such as ordinarily exists between an evil apprehended and a remedy proposed, between such an evil as a supposed over-discount, for instance,

by the bank at one time, or an under-discount at another, and the abrupt removal of all the public deposits? And if no one can see the connection, how can it be supposed that, in giving the power of removal as a remedy, Congress had in view any such evil?

A question may arise between the government and the bank respecting the right of the parties to the sum of one hundred and fifty thousand dollars, as in the case of the French bill. It is a question on which different opinions may be entertained, and which is, in its nature, fit for judicial decision. Does any man imagine that such a case as this was in the eye of Congress when they granted the power of withdrawing the whole public treasure from the bank? Can it be for one moment maintained, that Congress intended that, in such a case, the Secretary should compel the bank to adopt his own opinion, by the exercise of a power, the very exertion of which deranges the currency, interferes with the industry of the people, and, under some circumstances, would hazard the safety of the whole revenue?

The committee think it cannot admit of rational doubt, that, if Congress had intended to give to the Secretary any power whatever not directly touching the deposits themselves, not only would it have specially pointed out the cases, but it would also, most assuredly, have provided a remedy more suitable for each case. The nature of the remedy, therefore, which is prescribed, clearly shows the evils intended to be provided against.

To admit that the Secretary's conduct is subject to no control but his own opinion of the general interest and convenience of the people, is to acknowledge the existence, in his hands, of a discretion so broad and unlimited, that its consequences can be no less than to subject, not only all the operations of the bank and its offices, but its powers and capacities, perhaps its very existence, to his individual will. He is of opinion that the law creating it is, in many of its provisions, unconstitutional; he may not unnaturally, therefore, esteem it to be his duty to restrain and obstruct, to the utmost of his power, the operation of those provisions thus deemed by him to be unconstitutional. He is of opinion that the existence of such a powerful moneyed monopoly is dangerous to the liberties of the people. It would result from this, that if, in the discharge of his official duty, he is

to follow no guide but his own sense of the interest of the people, he might feel bound to counteract the operations of this dangerous monopoly, diminish its circulation, curtail its means, and prejudice its credit. To accomplish these very purposes, and these alone, he might withdraw the deposits. The power given him by Congress would thus be used to defeat the will of Congress in one of its most important acts, by discrediting, and otherwise injuriously affecting, an institution which Congress has seen fit to establish, and which it has declared shall continue, with all its powers, to the expiration of its charter.

The power conferred on the Secretary is a trust power, and, like other trust powers, in the absence of express terms setting forth the occasions for its exercise, it is to be construed according to the subject and object of the trust. As in other cases of the deposit of moneys in banks, the primary object sought to be accomplished by Congress, by that provision of the charter now under consideration, is the safe-keeping of the money. The Secretary's trust, therefore, primarily and principally respects this safe-keeping. But another object is distinctly disclosed in the charter, which object is intimately connected with the fund; and that is its transfer and exchange from place to place, as the convenience of government might require. The Secretary's trust, therefore, respects also this other object, thus connected with the fund; and when either of these objects requires a removal, a removal becomes a just exercise of his authority. To this extent, none can doubt the existence of his power. If in truth the money is believed to be unsafe, if in truth the bank will not grant the facilities which it has promised, in consideration of receiving and holding the fund, then certainly it ought to be removed. But here the power must stop, or else it is altogether unbounded. Here is a just and reasonable limit, consistent with the character of the power, consistent with the general duties of the Secretary, and consistent with the nature of the remedy provided.

The charter of the bank is the law; it is the expressed will of the legislature. That will is that the bank shall exist, with all its powers, to the end of its term. That will, too, as the committee think, is, that the public deposits shall continue in the bank so long as they are safe, and so long as the bank fulfils all its duty in regard to them. The Secretary assumes a

broader ground. He claims a right to judge of the proceedings of the bank on all subjects. Admitting the fund to be safe, and admitting that the bank has performed all its duties in regard to it, he claims an authority, nevertheless, to remove the deposits whenever he shall form an opinion, founded on the conduct of the bank in any particular whatever, and however unconnected with the public moneys, that the general interest of the people requires such removal. If, in his opinion, it discounts too little, or discounts too much, if it expands or contracts its circulation too fast or too slowly, if its committees are not properly organized, if it claims damages on protested bills which it ought not to claim, if, in his opinion still, it is guilty of a wrongful meddling in politics, or if it do any thing else not consistent with his sense of the public interest, he has a right to visit it with a withdrawal of the public money from its custody. If this claim of power be admitted, it would seem to the committee to be a fair result that the Secretary has power to withdraw the deposits for no other reason than that he differs with Congress upon its constitutional authority to create any bank, or upon the constitutionality of this particular bank, or upon the utility of continuing it in the exercise of its chartered powers and privileges till its term shall expire.

The committee, therefore, are of opinion, that it was not the intention of the legislature to give to the Secretary of the Treasury a general guardianship over the public interests in all matters connected with the bank; but that his power is a limited one, and is confined to the safety and the proper management of that portion of the public interests to which it expressly relates; that is to say, to the public moneys in deposit in the bank.

But the extent of the Secretary's discretion, as asserted by himself, reaches even farther than the wide range which the committee have here described. It is not confined to the protection of all the various interests which the government and the country have in the bank, or to a supervision and control over all the conduct of the bank; but it embraces all branches of the public interest, and touches every thing which in any way respects the good of the people. He supposes himself rightfully to possess the power of removing the deposits, whenever any causes, springing up in any part of the whole wide field of the general

interest, may appear to him to call for such removal. Notwithstanding he may suppose all the great interests confided to the bank to be perfectly safe, notwithstanding he may have no occasion to complain of any part of its conduct, notwithstanding, even, it may so have demeaned itself as to have become the object of his favor and regard, yet, if his construction be admitted, he may remove the deposits simply because he may be of opinion that he might place them, with a prospect of still greater advantage, in other hands. If he be of opinion that the commerce of the country or its manufactures would be benefited by withdrawing the public money from one bank and placing it in many, that would be an exercise of authority entirely within the limits which he prescribes to himself. It would be a case in which he would only follow his own sense of what the general interest and convenience of the people required. He might think, too, that, by withdrawing all the public treasure from the Bank of the United States, and placing it in the hands of twenty or thirty State banks, to remain there during his pleasure, and to be drawn thence, again, at his will, he might be enabled effectually to advance certain other objects, which, whatever others might think of them, he might consider to be essential to the good of the people. All this, if his doctrine be right, is within his just authority. A power necessarily running to this extent is a power, in the opinion of the committee, which can never be admitted.

Having thus expressed an opinion upon the general extent of the power claimed by the Secretary, the committee proceed to consider the reasons which he has reported to Congress as the particular grounds on which the power has been exercised in the present case.

The first reason assigned by the Secretary is the near approach of the period when the bank charter will expire. That period is the 4th of March, 1836, more than two years distant; nearly two years and a half at the time of the removal. Three sessions of Congress are, in the mean time, to be held; and inasmuch as the Secretary himself says that "the power over the place of the deposits for the public money would seem properly to belong to the legislative department of government," the committee think it might reasonably have been expected by him that Congress would not fail to make, in season, suitable regu-

lations on a subject thus admitted to be within the just exercise of its authority, and properly one of its duties.

Why, then, should he not have waited till Congress had seen fit to act upon the subject, or had manifested a disposition not to act? The matter of the deposits had been before Congress last session; and Congress had then thought no provision to be, as yet, necessary. Its undoubted sense was, that the public moneys should remain where they were. This was manifested by proofs too clear to be questioned. Another session was fast approaching; and why was not the whole subject left where Congress had chosen to leave it at the end of its last session, to await the free exercise of its legislative power at this session? It might have been fit for the executive to call the attention of Congress, at this time, to the necessity of some legal provisions respecting the future custody of the public moneys; and it would, doubtless, have been proper for Congress, without such call, to take up and consider the subject of its own accord; but the committee see no reason whatever, in the approaching expiration of the charter, for a change so sudden, and producing such important effects, made so long before that expiration, at a time when Congress had recently had the subject before it, and when, too, it was again about to assemble, and would naturally have reasonable and full opportunity to adopt any necessary legislative provisions. The Secretary has stated no reason satisfactory to the committee for not deferring this important step until the meeting of Congress. He sets forth no emergency, no sudden occasion, nothing which, in their judgment, made immediate action by him necessary.

The Secretary supposes it to have been his duty to act on the belief that the bank charter would not be renewed; and he refers to recent popular elections in support of this opinion. The committee believe it altogether unusual to assign such reasons for public and official acts. On such subjects, opinions may be very various. Different and opposite conclusions may be drawn from the same facts by different persons. One man may think that a candidate has been elected on account of his opposition to the bank; another may see only that he has been chosen notwithstanding such opposition. One may regard the opposition, or the support of any measure, by a particular candidate, as having been itself a promoting cause of the

success of his election; another may esteem it as a formidable objection, overcome, however, by more powerful reasons; and others, again, may be of opinion that it produced little or no effect on the one side or the other. But if inferences less uncertain could be drawn from such occurrences, the committee still think, that for a public officer to presume what law the legislature will or will not pass, respecting matters of finance, from the election of a particular person to the chief magistracy, implies a consequence from such election which the constitutional independence and dignity of the legislature will not allow to be admitted.

But if, for this or other reasons, the Secretary had persuaded himself that the charter of the bank would not be renewed, still it certainly did not follow that the deposits ought to be removed before Congress had decided on the hands into which they should be transferred, and had made suitable regulation respecting their future custody. If there were good ground for thinking that Congress would not recharter the bank, for that very reason there was equally good ground for supposing that it would make proper and seasonable provision for the keeping of the public moneys elsewhere. How could the Secretary doubt that Congress would omit to do that which he avers to be one of its appropriate duties? The question is, not what measures Congress might be expected to adopt, such as the extension or renewal of the charter of the bank; but whether it ought not to have been presumed that it would adopt some measure, and that a seasonable and proper one, according to its power and its duties; and whether, therefore, this anticipation of the action of Congress, on the eve of its session, is to be justified. The bank charter declares that the deposits of the public money shall be made in the bank and its offices, and that the bank shall continue till March, 1836. Where does the Secretary find his power to decide that the deposits shall be so made but for seventeen years from the date of the charter, instead of twenty? If he may thus withdraw the deposits two or three years before the expiration of the charter, what should restrain him from exercising the same authority five years before its expiration, or ten years? A plain and cogent necessity, the existence of a case which admits of no reasonable doubt, and which is too urgent for delay till Congress can provide for it, could

alone justify an interference with the public moneys, lodged in the bank by law, for the double purpose of safe-keeping and fulfilment of solemn contract.

But supposing it not reasonable for the Secretary to have expected the interposition of Congress, and admitting that he might consider the withdrawal of the deposits as an act which was to be done, at some time, by himself, how can it, nevertheless, be argued, that so early and so sudden a withdrawal was necessary? The committee can perceive no possible reason for this in any state of facts made known to them. The withdrawal of the money, left on deposit, from a bank whose charter is about to expire, is naturally one of the things longest postponed. It is as safe the last day of the existence of the bank, in common cases, as at any previous period. The bank expects the recall of its deposits near the period of its expiration, and prepares itself accordingly. The operation, if made gradually, produces the least possible disturbance in the business of the community.

Former experience would seem to have held out a salutary light for the guidance of the Secretary, in this part of his official duty. At the time of the expiration of the charter of the former bank, Mr. Gallatin was Secretary of the Treasury, and the public deposits were in the bank. The charter of the bank was to end on the 4th of March, 1811; and it does not appear that Mr. Gallatin thought it necessary to make any provision whatever for removing any part of the deposits, except by drawing on them for the common uses of government, until late in the very month preceding the expiration of the charter. A large amount of those deposits remained, indeed, in the vaults of the bank after the charter had expired, and until they were wanted in the general operations of the treasury. And why should it be otherwise? Why should that be done suddenly now, which the Secretary thinks could not be done suddenly hereafter, without great inconvenience? Is it not the just inference from his own argument, that the thing should not have been done suddenly at all? As to the idea that the credit of the paper of the bank will be depreciated near the time of the expiration of its charter, or that it would be inconvenient for it, at that time, to be called on for the deposits, the committee are utterly at a loss to see the slightest foundation for such an opinion. Experience

Albert Gallatin

From the Painting by Daniel Huntington, in the possession of
Mr. Frederick Gallatin, New York



W. E. H. & Co., Boston.

is against it; and all reason, as the committee think, is against it also. There is nothing to render it in any degree doubtful that the bills of the bank will be in as good credit the last day of its charter, and even after that time, if any shall be outstanding, as they are now; and there is as little to render it doubtful that then, as now, the bank would be competent to answer all demands upon it. In the opinion of the committee, the withdrawal of the public funds was both unnecessarily early and unnecessarily sudden. It might have been made gradually, it might have been deferred; and it might have been, and ought to have been, as the committee think, not ventured upon at all, until the attention of Congress itself had been called to the subject. The committee, therefore, entirely dissent from this first reason reported by the Secretary. They see nothing which proves to them the existence of the slightest occasion for taking this important step at the moment it was taken. So far as it depends on this reason, the committee think the removal was made without necessity, without caution or preparation, with a suddenness naturally producing mischievous consequences, and in unjustifiable anticipation of the legislation of Congress.

But the Secretary thinks there are other reasons for the removal, growing out of the manner in which the affairs of the bank have been managed, and its money applied, which would have made it his duty to withdraw the deposits at any period of the charter.

Of these reasons, arising from the alleged misconduct of the bank, the first is, that many important money transactions of the bank, instead of being managed by a board of seven directors, are placed under the control of a committee of exchange, of which committee no one of the public directors, as they are called, is allowed to be a member.

This charge consists of two parts; first, that the discounts of bills are made by a committee, and not by a quorum of the board; second, that the public directors are not allowed to be of this committee.

It is not alleged that, in the discounts of bills by this committee, any indiscretion has been committed, or any loss incurred, or that, in consequence thereof, any facility to the mercantile community has been withheld, or any duty of the bank to the government violated. The objection is, simply, that bills are dis-

counted by a committee. Supposing this to be an irregularity, or illegality, in the proceedings of the board, how is it to be corrected by withdrawing the deposits? What connection is there between the two things? It is not pretended that this mode of discounting bills endangered the deposits; it is not pretended that it made the bank either less able or less willing to perform every one of its duties to government. How should the withdrawal of the deposits, then, be suggested by the discovery of such an irregularity, real or supposed? The committee are not able to perceive the least propriety in applying the power of removal to a proceeding of this kind, even if it were admitted to be irregular or illegal. But is the practice illegal? It is believed to be not at all unusual. It is believed to be quite common, in banks of large business, for bills of exchange, which are presented every day, and almost every hour in the day, to be discounted either by a committee of the directors, or by the president, or even other officers, acting under such general orders and instructions as the directors, at their stated meetings, prescribe. A large board of directors cannot assemble every day, perhaps not oftener than twice a week. If bills of exchange could only be discounted at these periodical meetings, the business of exchange could not go on with the promptitude and despatch so important to commercial men in such transactions. The committee suppose the truth of these remarks will be at once admitted by all who have knowledge of business of this kind.

The general management and control, the authority of examining and supervising, of contracting or enlarging the amount of daily discounts, according to the state of the bank, and of giving every other order and direction on the subject, still remains with the directors, and is constantly exercised by them. They still manage the affairs of the bank, in the language of the charter, although they may depute to a committee the authority of inquiring and deciding upon the credit of persons whose names are on bills of exchange offered for discount, and on the rate of exchange current at the day. The legal question would be, whether the directors, by rule or by law, may not authorize a small number of their own board to discount bills. The bank has been advised that it might rightfully do this; and if it be not clear that this opinion is right, it is certainly far from clear that it is wrong; and in this state of the question, the general

practice of other banks, under similar provisions in their charters, may well relieve the directors from the imputation of intentional mismanagement.

If, in all this, the bank has violated its charter, what other banks of extensive business have not done the same thing?

But the other subject of complaint, and that which seems to be regarded as the more offensive part of this regulation, is, that the public directors, as they are called, have not been allowed to be on this committee.

It may be observed, in the first place, that, if the discounting of bills of exchange by a committee, instead of the whole board of directors, be illegal, it would hardly be rendered legal by placing any or all of these public directors on the committee as members. But the Secretary seems to suppose that there was some particular object in this exclusion of these directors, as if there had been something wrong to be done, and therefore secrets to be kept, by this committee. It is not easy to see what foundation there can be for this opinion. All those discounts are matter of record. They appear every day in the books of the bank. Every director, on or off the committee, sees them, or may see them, at pleasure. There is no secrecy, nor any motive for secrecy, so far as this committee can perceive. Very proper causes may have existed, for aught that can be known by the Senate, for the omission of these particular directors from this particular committee. Their services might have been deemed more useful in other committees; or, however respectable in general character, or however useful in other parts of the direction, they may have been esteemed not so well acquainted as others with the business of foreign or domestic exchange. And even if there were, or are, other causes for the omission, such as are less consistent with the existence of that harmony and mutual respect which it is so desirable should prevail in such a board, these causes cannot furnish any just ground for asserting, either that the business of exchange was illegally conducted, or that the constitution of the committee was proof of the existence of any motive not fit to be avowed.

But the Secretary entertains an opinion respecting the character and duties of the directors appointed by the President and Senate, in which the committee do not concur. He denominates them "public directors," and "officers of the government."

By the charter of the bank there are to be twenty-five directors. Of these, twenty are to be chosen by the individual stockholders, and five appointed by the President, with the advice and consent of the Senate. As the government owned one fifth of the stock of the bank, it was judged expedient to place in the hands of the President and Senate the appointment of one fifth of all the directors. But they are not called public directors, nor officers of the government, nor public agents; nor are they entitled, so far as the committee can perceive, to either of these appellations, any more than the other directors. The whole twenty-five directors are joint managers of a joint fund, each possessing precisely the same powers and charged with the same duties as every other. They derive their appointments, it is true, from different sources, but when appointed, their authority is the same. There is not one word in the charter intimating, in the remotest manner, that the five directors appointed by the President and Senate have any particular duty, or are the objects of any peculiar trust. The charter calls them, not government directors, not public directors, but simply the directors appointed by the President and Senate. They are placed in the direction to consult with the other directors for the common good of the bank, and to act with these others, and vote with them on all questions. They are, what the law calls them, directors of the bank, not agents of the government. They are joint trustees with others in a joint interest. If any thing illegal or improper takes place in the board, they are bound to resist it by the duty which they owe the individual stockholders, as much as by the duty they owe the government; because they are agents of the individual stockholders, and have the same authority to bind them by their acts as to bind the government. In like manner, it is the duty of those directors who are appointed by the individual stockholders to give notice, as well to government as to the stockholders, if any thing illegal takes place or is threatened. All those directors act and vote together, on the smallest as well as on the highest occasions, and, by their joint votes, bind the corporation, and bind both the government and individual stockholders to the extent of their respective interests in the corporation.

If the directors appointed by the President and Senate had been excluded by the charter from any part of the power exer-

cised by the others ; if it had been forbidden them to interfere, to the same extent and with the same effect, as the rest, in the common business of the bank, there might be some reason for supposing that an uncommon character, a character not so much of coöperation as of supervision and inspection, was intended to be conferred on them. But they do interfere, and justly, in all transactions of the bank. They do vote and act on all subjects like the other directors. Being, then, possessed of this common character of directors, and enjoying all its powers to the fullest extent, the committee know no form of argument by which an uncommon and extraordinary character is to be raised by construction, and superadded to the common character of directors which thus already belongs to them.

By granting the charter, and by accepting it, the government, on the one hand, and the individual stockholders, on the other, have agreed, that, of the directors, as joint agents of all parties, the stockholders shall appoint twenty and the government five. The interest of all parties is confided to this joint agency ; and any distinction in their powers, as arising from their different modes of appointment, is, in the judgment of the committee, not to be sustained. They regard such distinction as entirely inconsistent with the nature of the agency created, and as deriving not the least countenance from any thing contained in the law. The committee, nevertheless, to avoid misapprehension, wish to repeat, that it is undoubtedly the duty of the directors appointed by the President, and of all other directors, to give notice, both to government and the stockholders, of any violation of the charter committed or threatened.

The Secretary of the Treasury has thought proper to observe that the measures of the committee of exchange are, as it appears, designedly, and by system, so arranged as to conceal from the officers of the government transactions in which the public are deeply involved. This, it must be admitted, is a very serious charge. It imputes a corrupt motive. The committee have sought for the foundation, either in evidence or argument, on which this charge rests. They have found neither. They find only the charge, in the first place ; and then they find the charge immediately stated as a fact, and relied on as the basis of other charges.

The second reason for the removal specially reported by the

Secretary as arising from the conduct of the bank, respects the bill of exchange drawn by the Secretary of the Treasury on the government of France, and purchased by the bank.

The general facts connected with this case are these :—

By the late treaty of indemnity between the United States and France, it was stipulated that the French government should pay to that of the United States twenty-five millions of francs, to be distributed among those American citizens who had claims against France for the unlawful seizure, capture, and condemnation of their vessels and property ; the whole sum to be paid in annual instalments of four million one hundred and sixty-six thousand six hundred and sixty-six francs each, into the hands of such persons as should be authorized by the government of the United States to receive it ; the first instalment to be paid at the expiration of one year from the exchange of the ratifications.

On the expiration of the year, the Secretary drew a bill of exchange, signed by himself as Secretary, on the French government, for the amount of this instalment, and sold it to the bank, like any other bill of exchange, and received the proceeds by credit of the amount to the account of the Treasurer in the bank.

On the presentment of this bill at the French treasury, payment was refused ; the bill was accordingly duly protested, and it was taken up by a third person for account of the bank. The damages accruing on this bill, according to law and constant usage in such cases, are one hundred and fifty-eight thousand dollars. If this bill had been transferred by the bank, as probably it was, the bank itself would have been answerable for damages, even at a higher rate, if a third person had not taken up the bill for the honor of the bank. On receiving information of the protest of the bill, the officers of the bank, as was their duty, gave immediate notice to the treasury department, and accompanied that notice with the information, always given in such cases, that the drawers of the bill would be held answerable for the damages. Such is the substance of the facts in this case.

The bank, it would appear, was willing to collect the bill on account of government, and to credit the treasury with the proceeds when received, a course of proceeding which had this to recommend it, that the money to be paid on the bill was to be received by the government simply in just for claimants under

the French treaty, and was not ultimately destined to the ordinary uses of the treasury. On the contrary, indeed before the dishonor of the bill was known, it had been made already the legal duty of the Secretary to place the fund, so soon as received, at interest, for the benefit of the claimants.

But it was thought best to sell the bill, and to realize at once its amount into the treasury; and the bill was sold to the bank in preference to others offering to purchase, for no reason, it is to be presumed, except that the terms of the bank were more satisfactory. The bill was thus purchased by the bank, and its proceeds credited to the treasury. This was a mere transaction of the purchase and sale of a bill of exchange. There was no trust confided to the bank, and no fiscal agency in the whole matter. Indeed, the agency of the bank had been declined, the Secretary preferring to deal with it, not as an agent, but as a purchaser, proposing to it not to collect the bill, but to buy it. On being remitted to Europe, and presented for payment, the bill was protested. By the universal commercial law, the government, on the occurrence of this protest, became amenable to the bank for the amount of the bill, with damages. These damages may be ultimately claimed, with justice, from the French government, if the bill was drawn upon sufficient grounds, and on proper authority; in other words, if the obligation of the French government was such, that it was bound to accept and pay the bill. But unless there be something in the case to vary the general rule, which the committee do not perceive, these damages were part of the debt which had become due to the bank, as much as the principal sum of the bill. If this be so, how could the directors relinquish this part of the debt any more than the other? They are agents for the corporation; they act as trustees, and have no authority, without consideration, to release either to the government or to individuals debts due or properly belonging to the corporation.

It has been suggested, that the bank should have taken up this bill when protested, on government account. Two answers may be given to this suggestion. The first is, that the bill had been taken up by a correspondent abroad, for account of the bank, before it was known in the United States that it had been protested. The second is, that it would have been unlawful for the bank to advance such amount to the government, or on ac-

count of government, for the purpose of taking up this bill, or for any other purpose, without an act of Congress. The express words of the charter forbid it.

But, as a reason for removing the deposits, it appears to the committee quite immaterial whether the bank be right or wrong in claiming these damages. If wrong, it will not recover them. It is not the judge of its own rights; and if the appropriate tribunals shall decide that the bank was acting, on this occasion, or ought to have acted, as the agent of government, or that it was its duty to take up the bill on account of government, then the damages will not be awarded to it. In the worst aspect of this case, how can its conduct, in this respect, be any possible reason to justify the removal of the deposits? What connection has this occurrence with the safe-keeping of the public treasures, or with the remitting them from place to place, to meet the convenience of government, according to the duty of the bank under the charter? The bank thinks itself entitled to damages on a protested bill purchased and held by itself, and drawn by government. The Secretary of the Treasury thinks otherwise. If there be no reason to doubt the sincerity of the Secretary's conviction, there is as little to doubt the sincerity of that entertained by the bank; and it is quite inconceivable to the committee that the pendency of such a difference of opinion, on such a question, should furnish any reason whatever for withdrawing the deposits, unless it be at once admitted that the Secretary holds the power of removal as a perfectly arbitrary power, and may exercise it, by way of punishment, whenever, in any particular, the conduct or the opinions of the bank do not conform to his pleasure.

The Secretary does not argue this matter. He offers no reason in opposition to the legal right of the bank to the damages claimed. Indeed, he hardly denies the right. He commences his observations on the subject by saying that the ruling principle of the bank is its own interest; and closes them with another declaration, that, as fiscal agent to the public, it availed itself of the disappointment of its principal for the purpose of enlarging its own profits. Assertions like these, however else they may be disposed of, cannot be made subjects of argument.

The last charge preferred against the bank is, that it has used

its pecuniary means with a view to obtain political power, and thereby secure the renewal of its charter.

The very statement of such a charge, as a reason for removing the deposits, is calculated to excite distrust in the wisdom and propriety of that measure; because the charge, too general to be proved, is too general, also, to be disproved; and, since it must always rest mainly on mere opinion, it might be made at any time, by any Secretary, against any bank. It would be, therefore, always a convenient cloak under which to disguise the true motives of official conduct.

If proof be made out that the funds of the bank have been applied to illegal objects, the proper mode of redress and punishment should have been adopted; but what has this to do with the deposits? As in the case of the French bill, the Secretary cannot justify the removal of the deposits on any such ground as this, unless it be conceded that he may use the power of removal as a punishment for any offence, of any kind, which the bank, in his opinion, may have committed. The committee have already expressed the opinion that no such latitude of power belongs to him; and the assertion of such a power, for such a cause as is now under consideration, shows that the power ought never to belong to any Secretary; because the offence on account of which it is here proposed to be exercised is a political offence, incapable of definition, depending merely on the Secretary's opinion, and necessarily drawing into its consideration all the exciting controverted topics of the day. The bank, it is said, "has sought to obtain political power." What is the definition of such an offence as this? What acts constitute it? How is it to be tried? Who is to be the judge? What punishment shall follow conviction? All must see that charges of this nature are but loose and vague accusations, which may be made at any time, and can never be either proved or disproved; and to admit them as sufficient grounds to justify the removal of the deposits, would be to concede to the Secretary the possession of a power purely arbitrary.

The main fact relied on for this cause of removal shows how extremely unsafe all proceedings on any such reasons must be. That main fact is, that, between December, 1830, and December, 1831, the bank extended its loans twenty millions of dollars; and, as if to leave no doubt of the motive of this extraordi-

nary conduct, it is further alleged that it continued to add rapidly to its loans, until, in May, 1832, while its petition for renewal was pending, those loans amounted to seventy millions. The Secretary declares that this extraordinary increase of loans, made in so short a space of time, and on the eve of a contested election, in which the bank took an open and direct interest, demonstrates that it was using its money to obtain a hold upon the people of the country, in order to induce them, by the apprehension of ruin, to vote against the candidate whom it desired to defeat. This is strong assertion; but, so far as the committee perceive, it is assertion merely. It is but the Secretary's own inference from facts, from which very facts his predecessors in office have drawn no such conclusions. This great extension of the loans, be it remembered, took place in 1831. Why was it not then complained of? How should it have escaped the vigilance of the Secretary of that day, at the time it took place? And if it did not escape his vigilance, why did he not remove the deposits? So, also, as to the amount of loans in May, 1832. That amount was perfectly well known at the time; and if it proved any offence, why was not the punishment inflicted then? How should all other Secretaries have slept over this great mischief?

It might further be well asked, What evidence is there of the existence of any such motive as is imputed to the bank, in this extension of its loans? There is no evidence, but the mere fact itself of the extension; and it cannot be denied, that other and very different reasons for the extension may have existed; so that the charge is proved no otherwise than by inferring a bad motive from an act lawful in itself, and for which good reasons may have existed.

Nor is it either acknowledged, nor, so far as the committee know, proved, that the bank took an open and direct interest, as a corporation, in the election referred to. The bank, no doubt, was much interested in certain accusations which had been brought against it, and which became subjects of public discussion during the pendency of that election. It had been charged with great misconduct, and gross violation of its charter. These accusations must, undoubtedly, have called on the directors for answer. If made before Congress, they were to answer before Congress; if made judicially, they were to answer in the courts;

if made in an official and formal manner, and in that manner submitted to the judgment of the country, the directors were bound to meet them before that country, by every fair use of fact and argument, not only for the purpose of defending themselves as directors, but for the higher purpose of maintaining the credit of the bank, and protecting the property intrusted to their care. If, in thus defending the bank before the community, the directors carried their measures beyond this fair object of defence, or if they resorted to dishonorable or indecorous modes of discussion; if they sought rather to inflame than to reason; if they substituted personal crimination for argument; if even they met invective and violence with corresponding invective and violence,—they followed bad examples, and are not to be justified. But of their right to defend themselves before the public against grave charges brought against them, and urged before the public, the committee entertain no doubt; and they are equally clear in opinion, that the Secretary of the Treasury is not constituted the judge of the mode of exercising this right, and cannot justly remove the deposits merely because the conduct of the bank, in this particular, has not happened to conform to his wishes.

The committee, therefore, consider this last reason of the Secretary equally insufficient with the rest; and they regard it as the most objectionable of all in its principle, inasmuch as it proceeds on grounds which, if admitted, would leave a very high official duty to be exercised from considerations connected with the political feelings and party contests of every day, with no guide but the individual opinion of the officer who is to perform the act, an opinion which, it is possible, may itself be no less tinctured with political motive and feeling than the conduct which it would reprehend. If an unlimited power be conceded to the Secretary to inflict penalties on the bank for supposed political motives, in acts legal in themselves, where is the security that the judge may not be found acting under the same impulses which he imputes to the party accused?

The committee entertain no doubt that the immediate cause of the existing public distress is to be found in the removal of the public deposits, and in the manner in which that removal has been made. No other adequate cause has been suggested; and those who justify the removal do not so much deny this

to have been the cause, as insist that it was not necessary that any such effect should have followed from it. In other words, they argue that, notwithstanding the removal, the bank still possessed the power, if it had chosen to exercise it, of warding off the blow which has fallen on the country, or at least of mitigating its severity.

Nothing could have been rationally expected but that the bank, deprived of the deposits, and denounced by the executive government, would feel itself called on to take just care of its own interest and its own credit. Of the means necessary to the attainment of these ends, the directors alone were judges, and the committee have no evidence before them to show that they have not exercised their judgment fairly, and with a real solicitude to accommodate the commercial community, in the altered state of things, as far as has been practicable, consistently with the security of the institution, which it is equally their duty to the public and the stockholders to maintain. They are certainly under every obligation of duty, in the present distressed state of the country, to do every thing for the public relief which is consistent with the safety of the bank, and with those considerations which the approaching expiration of its charter makes it important for the directors to regard.

The removal itself, and the manner of effecting it, are causes entirely sufficient, in the judgment of the committee, to produce all the consequences which the country has experienced, and is experiencing; and these consequences, they think, are to be referred to those causes as their just origin. How could any other result have been expected? The amount of the deposits was nine millions of dollars. On this amount in deposit there was sustained, no doubt, a discount of far greater magnitude. The withdrawal of this sum of nine millions from the bank necessarily compelled it to diminish its discounts to the full extent of that part which may be supposed to have been sustained by it. It is to be remembered, too, that this was done at a moment when business of every kind was pressed with great activity, and all the means of the country fully employed.

The withdrawal of so large an amount, at such a time, from hands actually holding and using it, could not but produce derangement and pressure, even if it had been immediately placed in other banks, and if no unfriendly feeling and no want of con-

fidence had attended the transaction. But it is quite obvious, that the operation to which the Secretary has resorted has been attended with both these additional and powerful causes of derangement. It has created unfriendly feelings, and it has diminished confidence. This change of the deposits is made on the strength of charges against the bank, of a very grave and aggravated nature; such as, if true, would most seriously affect its credit for solvency and stability. It is proclaimed to the whole world as having converted itself into a political partisan, misapplied its funds, neglected its highest duties, and entered on a career of electioneering against the government of the country.

These serious charges necessarily put the bank on its defence; and the extraordinary spectacle is exhibited of a warfare by the national government on the national bank, notwithstanding that the government is itself a great proprietor in the bank, and notwithstanding that the notes of the bank are the currency in which the revenues of the country are by law receivable. The true and natural relation between the government and the bank is altogether reversed. Instead of enjoying the confidence of the government, it is obliged to sustain its most serious official assaults, and to maintain itself against its denunciations. The banks selected by government as its agents are themselves thrown, perhaps unwillingly, into an attitude of jealousy and suspicion toward the Bank of the United States. They become cautious and fearful, therefore, in all their proceedings; and thus those who should coöperate to relieve the public pressure are considering mainly their own safety. Fearful of each other, and fearful of the government, they see the distress continue, with no power of beneficial interposition.

It may be asked, Why are not these deposit banks able to maintain as large a circulation on the nine millions of deposits as the Bank of the United States? And will they not be thus able when the present panic shall have subsided? The committee think both these questions easily answered.

The Bank of the United States has a credit more general, it may be said more universal, than any State bank can possess. The credit of the Bank of the United States is equally solid, its bills and notes received with equal confidence, for the purpose of circulation and remittance, in every quarter of the country.

No paper circulation, so far as the committee know, which ever appeared in the world, has approached nearer to the value and uniformity of a specie currency than the notes and bills of the Bank of the United States. To the State banks these notes and bills have performed the office of specie. All the State banks have discounted, upon the possession of them, with the same freedom and boldness as they would have done on an equal amount of the precious metals. The curtailment of their circulation, therefore, is not merely a withdrawal of the amount curtailed from the general mass of circulation; it is removing, rather, to the amount curtailed, the basis of the general circulation; and although the actual amount of notes and bills has not of late been much diminished, there is reason to suppose that the amount held by State banks has been greatly diminished.

The removal of the deposits has operated directly on the amount of the circulating medium, at a moment when that amount could not bear any considerable reduction, suddenly made, without producing sensible effect. It has diminished prices, and in some instances it has had this effect to a very material degree. It has operated on the internal exchanges, and has, most manifestly, been attended with very serious and heavy inconveniences in that important branch of the national interest. More than all, it has acted on opinion; it has disturbed the general confidence; it has weakened the public faith in the soundness of the currency; and it has alarmed men for the security of property. As yet, we hardly know its effects on the credit of the country in Europe. Perhaps it is not easy to anticipate those effects; but if causes which operate here should be found to have been efficient there also, a still greater degree of pressure and distress than has yet been felt may be expected.

The committee, therefore, cannot but regard the removal of the deposits, on the whole, as a measure highly inexpedient and altogether unjustifiable. The public moneys were safe in the bank. This is admitted. All the duties of the bank connected with these public moneys were faithfully discharged. This, too, is admitted. The subject had been recently before the House of Representatives, and that house had made known its opinion against the removal by a very unequivocal vote. Another session of Congress was close at hand, when the whole matter would again come before it. Under these circumstances, to make the

removal, with the certainty of creating so much alarm, and of producing so much positive evil and suffering, such derangement of the currency, such pressure and distress in all the branches of the business of private life, is an act which the committee think the Senate is called on to disapprove.

The reasons which have thus been stated apply to the whole proceedings of the Secretary in relation to the public deposits, and make it unnecessary to consider whether there be any difference between his power over moneys already in the bank, and his power to suspend future deposits. The committee forbear, also, to consider the propriety of the measures adopted by the Secretary for the safe-keeping of the public moneys since their withdrawal from the bank. They forbear, too, from entering into any discussion at present of the course of legislation proper to be adopted by Congress under the existing state of things. In this report, they have confined themselves to the consideration of the removal of the deposits, the reasons assigned for it, and its immediate consequences; and on these points they have formed the opinions which have now been expressed.

They recommend to the Senate the adoption of the resolution which has been referred to them.

The Continuance of the Bank Charter^{*}

MR. PRESIDENT, — I rise, pursuant to notice, to ask leave to bring in a bill to continue for six years the act incorporating the subscribers to the Bank of the United States; and I shall hope for that indulgence of the Senate which is usually granted on such occasions, if I accompany its introduction with some remarks on the general state of the country, as well as on the nature of the measure proposed. If leave be granted, it is my purpose to move to refer the bill to the Committee on Finance, that it may take the usual course, and come up for the consideration of the Senate in due season.

Mr. President, in the midst of ample means of national and individual happiness, we have, unexpectedly, fallen into severe distress. Our course has been suddenly arrested. The general pulse of life stands still, and the activity and industry of the country feel a pause. A vastly extended and beneficent commerce is checked; manufactures are suspended, with incalculable injury to those concerned in them; and the labors of agriculture threatened with the loss of their usual reward. Our resources are, nevertheless, at the same time, abundant, and all external circumstances highly favorable and advantageous; such as fairly promised us, not only a continuance of that degree of prosperity which we have actually enjoyed, but its rapid advancement to still higher stages.

The condition of the country is, indeed, singular. It is like that of a strong man chained. In full health, with strength unabated and all its faculties unimpaired, it is yet incapable of

^{*} A Speech delivered in the Senate, on the 18th of March, 1834, on moving for leave to introduce a Bill to continue the Bank of the United States for Six Years.

performing its accustomed action. Fetters and manacles are on all its limbs. If we could but unbind it, if we could break these iron chains, if we could once more set it free, it would in a moment resume its activity, and go on again in its rapid career. It is our duty, Sir, to relieve this restraint, to unshackle the industry of the people, and give play, once more, to their common action and their common energies. The evils, all the evils, which we now feel, and feel so acutely, result from political measures; and by political measures, and political measures alone, can they be redressed. They have their origin in acts of government, and they must find their cure in other acts of government.

Only six months ago, Sir, the country presented an aspect, in regard to all its great interests, exceedingly satisfactory and gratifying. Our commerce was highly prosperous, and our manufactures, for the present at least, flourishing. Agricultural products commanded fair prices, and the general appearance of things exhibited more than a usual degree of activity. The year elapsing between the autumn of 1832 and that of 1833 was a year of great prosperity. In the activity of commerce, it is possible enough that some degree of over-trading had taken place; but there is nothing to show that great excess had been committed in that particular. In general, the state of things was one of real prosperity. The commerce of the country had reached, I think, to a greater extent than in any former year; the amount of the exports for 1833 being, according to the treasury estimate, no less than ninety millions of dollars, and that of the imports no less than one hundred and nine millions. The internal and coasting trade was in a still more flourishing condition. This branch of the national industry has grown into the very highest importance, affording a vast field for active usefulness, enriching all parts of the country by its mutual exchanges of commodities, and furnishing profitable employment to great numbers of the people. It was carried on last year, both by sea and land, with great vigor; and the situation of the currency of the country gave it facilities such as never existed elsewhere, to such an extent. The money circulation was free, and the banks in good credit. They were, doubtless, somewhat too economical in the use of specie, and sustained their credit on a basis not sufficiently broad to be quite secure.

But no great degree of danger to the circulation was generally feared.

Such was our condition in September last; and the change which has since taken place must strike all minds. How do we stand now, in respect to these great interests? Let us look to our commerce, the main source of our revenue, as well as a source of wealth, and let us see how that is affected, or likely to be affected, by recent occurrences. I have stated the amount of exports and imports for the last year; those for the present year cannot, of course, be yet estimated with accuracy; but we are not without some means of forming an opinion upon this interesting point. I think it is evident that there must be a falling off in the imports, and consequently a falling off in the revenue. I shall be very glad to find myself mistaken in this opinion; but it appears to me there is much reason to entertain it. As one of the Committee on Finance, I have felt it my duty, of course, to look to the state of the treasury, and to form some opinion, if I could, of what may be its future condition. Its present state, as we learn from the Secretary's report, with his estimate of the receipts and expenditures of the year, is substantially as follows:—

Estimated balance in the treasury, January 1, 1834, .	\$ 7,983,790
But from this deduct the amount of appropriations already made, and which remain unsatisfied, which amount, the Secretary supposes, may yet be required for the objects for which it was appropriated,	5,190,287
Balance remaining in the treasury, unappropriated, .	\$ 2,793,503
Estimated amount of receipts for 1834:	
Customs,	\$ 15,000,000
Land,	3,000,000
Bank dividends and miscellaneous, . . .	500,000
	<hr/> 18,500,000
Total of means for the use of 1834,	\$ 21,293,503
Estimated expenditures for 1834,	<u>23,501,994</u>

This statement would seem to threaten a deficit of more than two millions; and this will doubtless be the result, should the appropriations for the year all be called for within the year; but experience shows that this is not to be expected. What amount

of appropriations may remain uncalled for, however, is necessarily uncertain. Among the expenditures, it is to be observed, is included the sum of five millions, within a fraction, for the payment of the balance of the public debt, which becomes "*reimbursable*" at the commencement of next year. The Secretary supposes, even without making any allowance for the effect of recent measures, that the receipts for 1835 will be still less than those for 1834; and that, unless the revenue should be more productive than is anticipated, it will be necessary, in two years from this time, to retrace our steps, and to impose duties on articles which are now free, in order to meet the current expenses of the government. If such were the prospects of the country in regard to revenue before the late measures had so much disturbed its commerce, it cannot but be expected that, under the influence of that cause, there may be a very considerable deficiency, especially should the cause continue. It is not very easy to ascertain to what extent the importations of the year may fall short of previous importations, in consequence of the disturbed state of things; but I know the opinion is entertained among those who have the best means of forming a correct judgment, that there may be a falling off in the receipts of the customs of from a quarter to a third of the amount anticipated. Should this prove to be true, which there is certainly too much reason to fear, Congress may be called on, much earlier than within two years, to provide additional means of revenue.

The diminution will be mainly felt in the last half of the year, it being generally understood that orders for fall importations have been countermanded to a great extent. It is not thought improbable, that the receipts of the year from customs, estimated at fifteen millions, will fall down to twelve. This, should it happen, would no otherwise disturb the intended course of things than as it would postpone the payment of the balance of the public debt; but this effect it is not unlikely to produce. On such subjects, however, no very sure anticipations can be founded, and therefore I speak with no positiveness. But it is my expectation that the receipts for the year will fall below the estimate, and probably to the extent I have mentioned; and that this effect will be produced by no other cause than the deranged state of things occasioned by the removal of the public moneys from the Bank of the United States.

If such are the consequences of the measure on our foreign commerce, and on the revenue, its effect on the internal trade of the country is a thousand times more disastrous. Here it produces not only diminution, but stagnation; and such a stagnation as has caused a cessation of production. The industry of the country is arrested, and its useful labor suspended. Great activity prevailed in the manufacturing districts, under a sanguine expectation that the law of the last session would, for a time at least, insure success to that great interest. But this new measure has struck that interest with a sudden and deadly blow. It is now but little more than twelve months since the manufacturing portion of the community was deeply alarmed by the pendency of a measure in the other house, known usually as Mr. Verplanck's bill. Throughout the Middle and the Northern States, and wherever that interest existed, the apprehension of change in the policy of the country diminished the value of property, embarrassed all calculations for the future, and disturbed and deranged the course of private occupation and industry. But how small was all that evil, compared with the effects produced by the Secretary of the Treasury, when he interfered with the public revenues!

I will not go over the long list of cases in which prosperous manufacturing establishments have been compelled to discontinue their operations under the pressure of the times. I will only advert to an instance or two, taken, without selection, from papers and letters before me. Let Paterson, in New Jersey, be one of these instances; the condition of which interesting and afflicted town has been, indeed, repeatedly presented to the Senate by the members from that State. The population of Paterson, I believe, is about ten thousand; and it is known to be a population almost exclusively engaged in manufactures. In September last, 43,500 spindles were in operation in it. Of these, 24,500 have stopped, and 5,000 others are expected to stop as soon as stock on hand is worked up. I am informed that the manufacturers at Paterson cannot prevail on their consignees in Philadelphia and New York to become responsible for them, even to the amount of one third the cost of producing the article. The means, therefore, of paying labor, and purchasing new stock, are completely cut off.

We may see another instance, sufficiently appalling, in the

manufactures of New Hampshire. I understand that a cotton-mill at Dover, of six thousand spindles, has ceased operation, and another was to cease on the 15th of this month; a mill with four thousand spindles at Newmarket, and another at Nashua of five thousand, have ceased also; and a large woollen mill, at a place called the Great Falls, employing two or three hundred hands, has stopped with the rest. These, Sir, are instances of the effect of the experiment upon our manufacturing interests. Accounts similar to these have reached us from New York, Connecticut, Maine, Vermont, Rhode Island, and Pennsylvania. I need not enter into the particulars of these accounts. Their general character is like that of those which I mentioned from New Jersey and New Hampshire.

It is often inquired, how this enormous amount of evil could spring from a cause so apparently inadequate to produce it. Can it be possible, it is asked, that the Secretary has brought about all this distress simply by removing a few millions of dollars from one bank into other banks? Sir, nothing is more true, and nothing more easily accounted for.

Every commercial country has one great representative, constantly passing and acting between all its citizens. This universal representative is money, or credit, in some form, as its substitute. Without this agency nothing can be bought, and nothing can be sold; capital has no income, and labor no reward. It is no more possible to maintain the ordinary business and intercourse between man and man without money and credit, than to maintain an intercourse between nations without ministers or public agents, or to maintain punctual correspondence by letter without the mail. And all the distress which the country now suffers arises solely from acts which have deranged the currency of the country and the credit of the commercial community. The country is as rich, in its general appearance, as it was before the experiment was begun; that is to say, men have the same houses, lands, ships, and merchandise. But the value of these has fallen; or, to speak more correctly, they have lost the power of being exchanged; and they have lost this power because of the embarrassment which has befallen the general medium of exchange.

Six months ago, a state of things existed highly prosperous and advantageous to the country, but liable to be injuriously

affected by precisely such a cause as has now been put into operation upon it. Business was active, and carried to a great extent. Commercial credit was expanded, and the circulation of money was large. This circulation being of paper, of course rested on credit; and this credit was founded on banking capital and bank deposits. The public revenues, from the time of their collection to the time of their disbursement, were in the bank and its branches, and, like other deposits, contributed to the means of discount. Between the Bank of the United States and the State banks, there was a degree of watchfulness, perhaps of rivalry; but there was no enmity, no hostility. All moved in their own proper spheres, harmoniously and in order.

The Secretary disturbed this state of peace. He broke up all the harmony of the system. By suddenly withdrawing all the public moneys from the Bank of the United States, he forced that bank to an immediate correspondent curtailment of its loans and discounts. It was obliged to strengthen itself; and the State banks, taking the alarm, were obliged to strengthen themselves also by similar measures; so that the amount of credit actually existing, and on which men were doing business, was all at once greatly diminished. Bank accommodations were withdrawn; men could no longer fulfil their engagements by the customary means; property fell in value; thousands failed; many thousands more maintained their individual credit by enormous sacrifices; and all, being alarmed for the future, as well as distressed for the present, forbore from new transactions and new engagements. Finding enough to do to stand still, they do not attempt to go forward. This deprives the industrious and laboring classes of their occupations, and brings want and misery to their doors. This, Sir, is a short recital of cause and effect. This is the history of the first six months of the "experiment."

Mr. President, the recent measures of the Secretary, and the opinions which are said to be avowed by those who approve and support them, threaten a wild and ruthless attack on the commercial credit of the country, that most delicate and at the same time most important agent of general prosperity. Commercial credit is the creation of modern times, and belongs, in its highest perfection, only to the most enlightened and best

Roger Brooke Taney

From the Painting by G. P. A. Healy, Robing Room,
United States Supreme Court, Washington



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governed nations. In the primitive ages of commerce, article is exchanged for article, without the use of money or credit. This is simple barter. But in its progress, a symbol of property, a common measure of value, is introduced, to facilitate the exchanges of property; and this may be iron, or any other article fixed by law or by consent, but has generally been gold and silver. This, certainly, is a great advance beyond simple barter, but no greater than has been gained, in modern times, by proceeding from the mere use of money to the use of credit. Credit is the vital air of the system of modern commerce. It has done more, a thousand times, to enrich nations, than all the mines of all the world. It has excited labor, stimulated manufactures, pushed commerce over every sea, and brought every nation, every kingdom, and every small tribe, among the races of men, to be known to all the rest. It has raised armies, equipped navies, and, triumphing over the gross power of mere numbers, it has established national superiority on the foundation of intelligence, wealth, and well-directed industry. Credit is to money what money is to articles of merchandise. As hard money represents property, so credit represents hard money; and it is capable of supplying the place of money so completely, that there are writers of distinction, especially of the Scotch school, who insist that no hard money is necessary for the interests of commerce. I am not of that opinion. I do not think any government can maintain an exclusive paper system, without running to excess, and thereby causing depreciation.

I hold the immediate convertibility of bank-notes into specie to be an indispensable security for their retaining their value; but, consistently with this security, and, indeed, founded upon it, credit becomes the great agent of exchange. It is allowed that it increases consumption by anticipating products; and that it supplies present wants out of future means. As it circulates commodities without the actual use of gold and silver, it not only saves much by doing away with the constant transportation of the precious metals from place to place, but accomplishes exchanges with a degree of despatch and punctuality not otherwise to be attained. All bills of exchange, all notes running upon time, as well as the paper circulation of the banks, belong to the system of commercial credit. They are parts of one great whole. And, Sir, unless we are to reject the lights of expe-

rience, and to repudiate the benefits which other nations enjoy, and which we ourselves have hitherto enjoyed, we should protect this system with unceasing watchfulness, taking care, on the one hand, to give it full and fair play, and on the other, to guard it against dangerous excess. We shall show ourselves unskilful and unfaithful statesmen if we do not keep clear of extremes on both sides.

It is very true that commercial credit, and the system of banking, as a part of it, furnish a substitute for capital. It is very true that this system enables men to do business, to some extent, on borrowed capital; and those who wish to ruin all who make use of borrowed capital act wisely to that end by decrying it.

This commercial credit, Sir, depends on wise laws, steadily administered. Indeed, the best governed countries are always the richest. With good political systems, natural disadvantages and the competition of all the world may be defied. Without such systems, climate, soil, position, and every thing else, may favor the progress of wealth, and yet nations be poor. What but bad laws and bad government have retarded the progress of commerce, credit, and wealth in the peninsula of Spain and Portugal, a part of Europe distinguished for its natural advantages, and especially suited by its position for an extensive commerce, with the sea on three sides of it, and as many good harbors as all the rest of Europe? The whole history of commerce shows that it flourishes or fades just in proportion as property, credit, and the fruits of labor are protected by free and just political systems. Credit cannot exist under arbitrary and rapacious governments, and commerce cannot exist without credit. Tripoli and Tunis and Algiers are countries, above all others, in which hard money is indispensable; because, under such governments, nothing is valuable which cannot be secreted and hoarded. As government rises in the scale of intelligence and liberty, from these barbarous despotisms to the highest rank of free states, its progress is marked, at every step, by a higher degree of security and of credit. This undeniable truth should make well-informed men ashamed to cry out against banks and banking, as being aristocratical, oppressive to the poor, or partaking of the character of dangerous monopoly. Banks are a part of the great system of commercial credit, and have done much, under the influence of good government, to aid

and elevate that credit. What is their history? Where do we first find them? Do they make their first appearance in despotic governments, and show themselves as inventions of power to oppress the people? The first bank was that of Venice; the second, that of Genoa. From the example of these republics, they were next established in Holland and the free city of Hamburg. England followed these examples, but not until she had been delivered from the tyranny of the Stuarts by the revolution of 1688. It was William the Deliverer, and not William the Conqueror, that established the Bank of England. Who supposes that a Bank of England could have existed in the times of Empson and Dudley? Who supposes that it could have lived under those ministers of Charles the Second who shut up the exchequer, or that its vaults could have been secure against the arbitrary power of the brother and successor of that monarch?

The history of banks belongs to the history of commerce and the general history of liberty. It belongs to the history of those causes which, in a long course of years, raised the middle and lower orders of society to a state of intelligence and property, in spite of the iron sway of the feudal system. In what instance have they endangered liberty or overcome the laws? Their very existence, on the contrary, depends on the security and the rule both of liberty and law. Why, Sir, have we not been taught, in our earliest reading, that to the birth of a commercial spirit, to associations for trade, to the guilds and companies formed in the towns, we are to look for the first emergence of liberty from the darkness of the Middle Ages; for the first blush of that morning, which has grown brighter and brighter till the perfect day has come? And it is just as reasonable to say that bills of exchange are dangerous to liberty, that promissory notes are dangerous to liberty, that the power of regulating the coin is dangerous to liberty, as that credit, and banking, as a part of credit, are dangerous to liberty.

Sir, I hardly know a writer on these subjects who has not selected the United States as an eminent and striking instance to show the advantages of well-established credit, and the benefit of its expansion, to a degree not incompatible with safety, by a paper circulation. Or, if they do not mention the United States, they describe just such a country; that is to say, a new and fast-growing country. Hitherto, it must be confessed, our

success has been great. With some breaks and intervals, our progress has been rapid, because our system has been good. We have preserved and fostered credit, till all have become interested in its further continuance and preservation. It has run deep and wide into our whole system of social life. Every man feels the vibration, when a blow is struck upon it. And this is the reason why nobody has escaped the influence of the Secretary's recent measure. While credit is delicate, sensitive, easily wounded, and more easily alarmed, it is also infinitely ramified, diversified, extending everywhere, and touching every thing.

There never was a moment in which so many individuals felt their own private interest to be directly affected by what has been done, and what is to be done. There never was a moment, therefore, in which so many straining eyes were turned towards Congress. It is felt, by every one, that this is a case in which the acts of the government come directly home to him, and produce either good or evil, every hour, upon his personal and private condition. And how is the public expectation met? How is this intense, this agonized expectation answered? I am grieved to say, I am ashamed to say, it is answered by declamation against the bank as a monster, by loud cries against a moneyed aristocracy, by pretended zeal for a hard-money system, and by professions of favor and regard to the poor.

The poor! We are waging war for the benefit of the poor! We slay that monster, the bank, that we may defeat the unjust purposes of the rich, and elevate and protect the poor! And what is the effect of all this? What happens to the poor, and all the middling classes, in consequence of this warfare? Where are they? Are they well fed, well clothed, well employed, independent, happy, and grateful? They are all at the feet of the capitalists; they are in the jaws of usury. They are at the mercy of those who, if there be hearts of stone in human bosoms, have such hearts in their breasts. Look to the rates of interest, mounting to twenty, thirty, fifty per cent. Sir, this measure of government has transferred millions upon millions of hard-earned property, in the form of extra interest, from the industrious classes to the capitalists, from the poor to the rich. And this is called putting down a moneyed aristocracy! Sir, there are thousands of families who have diminished, not their luxuries,

not their amusements, but their meat and their bread, that they might be able to save their credit by paying enormous interest. And there are other thousands, who, having lost their employment, have lost every thing, and who yet hear, amidst the bitterness of their anguish, that the great motive of government is kindness to the poor!

It is difficult, Sir, to restrain one's indignation, when to so much keen distress there is added so much which has the appearance of mere mockery. Sir, let the system of the administration go on, and we shall soon not know our country. We shall see a new America. On the map, where these United States have stood, we shall behold a country that will be strange to us. We shall see a class of idle rich, and a class of idle poor; the former a handful, the latter a host. We shall no longer behold a community of men, with spirits all active and stirring, contributing, all of them, to the public welfare, while they partake in it, pushing on their fortunes, and bettering their own condition, and helping to swell, at the same time, the cup of the general prosperity to overflowing. We shall see no more of that credit which reaches out its hand to honest enterprise; of that certainty of reward, which cheers on labor to the utmost stretch of its sinews; of that personal and individual independence, which enables every man to say that no man is his master. Sir, I will not look on the picture. I will not imagine what spectacle will be exhibited, when this country not only halts in her onward march, but recedes; when she tracks back in the long and rapid strides of her forward movement; when she sets herself to undo all that she has done; when she renounces the good she has attained; when she obstructs credit, destroys enterprise, arrests commerce, and crushes manufactures.

Mr. President, I confess I find it difficult to respect the intelligence, and at the same time the motives, of those who alarm the people with the cry of danger to their liberties from the bank. Do they see the same danger from other banks? I think not. With them, bank capital and bank credit are dangerous or harmless, according to circumstances. It is a lion, whose conduct and character appear to depend on its keeper. Under the control of this government, it is fearful and dangerous; but under State authority, it "roars as gently as a sucking dove; it roars as it were any nightingale."

Both the members from New York have labored to persuade us that the public liberties of this whole country are in imminent danger from a bank with thirty-five millions. And yet, Sir, they feel no fears for the liberty of the people of their own State, with a banking capital of twenty-three millions, and a proposed addition of ten millions, all lodged in banks associated under the Safety Fund system, and all under the supervision of a political board, appointed by the government. In all this they see no danger to liberty; but their anxiety is intense lest a bank of thirty-five millions should enslave all the people of the twenty-four States!

Again, Sir, from the time of the *veto* message to the present moment, the country has been assailed with the cry of danger from the small portion of foreign capital which is in the stock of the bank. Republicanism, it is said, cannot exist in a country where there is a bank with dukes and marquesses and lords among its stockholders. And yet, Sir, have we not seen the executive approving of an enormous loan by the cities of this District from Dutch capitalists, and sanctioning a law binding down all their citizens, and all their property, to pay the interest of this foreign debt, by provisions vastly more strict and severe than those which compel the payment of taxes to their own government? And is not Pennsylvania now deliberating whether she will not send an agent to Europe to borrow money to meet that very exigency which the present state of things creates? And is not the new bank, too, proposed to be established in New York, to be created on foreign capital?

Sir, are arguments of this nature altogether creditable to the country? Do they exhibit us in a respectable light abroad? Do intelligent observers, elsewhere, behold our public men addressing themselves to the people in fair discussion on the real merits of public questions; or may they not think, rather, that they see them attempting to carry favorite measures of party by false cries of danger to liberty?

The truth is, that banks, everywhere, and especially with us, are made for the borrowers. They are made for the good of the many, and not for the good of the few. Even their ownership, to a very great extent, is in the hands of men of moderate property. I have read a very able speech, by Mr. Cushing, in the legislature of Massachusetts, in which he states that he has taken

pains to examine the list of stockholders in several banks in his neighborhood, and he finds a major part of the stock (I think more than two thirds) in the hands of charitable societies, guardians, widows, and traders with small capital. And, Sir, at this moment the stockholders of the Bank of the United States have infinitely less interest as stockholders in the questions which we are discussing, than they have as citizens of the country. The stock is constantly in the market, and daily changing hands; and any one who wishes for it may always buy it. It is not permanently vested in any hands; and this of itself shows that the corporation is, in its nature, incapable of prosecuting any purpose hostile to the public liberties.

Indeed, Sir, I think it time, high time, that there should be a pause in this outcry against the bank, as dangerous from its political power, or as favoring wealth in its accumulation rather than in its distribution. Prejudice excited against the bank is a much more powerful engine for political purposes than the bank itself. It is more than a match for ten banks. Not long ago, a member, not now with us, declared on this floor, that in the course of his political struggles, some years ago, he felt sure of triumph the moment an impression was made that the bank had taken part against him; and that, if he were again to be a candidate, he should wish for no surer pledge of success. His own experience, thus candidly stated, seems not to have been lost on others. I full well know, Sir, the power of such prejudices. I know how easily they may be excited, and how potent is their agency. Efforts to excite them, and calculations on their efficacy when excited, have sometimes succeeded, and must be expected sometimes to succeed, in popular governments. They are among the means by which little men occasionally become great. But they are not among the means by which lasting character is to be attained, any more than they are among the means by which substantial and important public service is to be rendered to the country.

I now proceed, Mr. President, to the state of opinion existing, both in and out of Congress, as to the remedy proper for the present condition of things.

There are three classes of persons, holding on this subject different opinions:—

1. Those who believe a bank to be constitutional and neces-

sary, and, seeing no danger from the present institution, would prefer, if they could follow their own choice, to recharter the bank, for the usual period, with the usual powers; modified, however, in any manner that the experience of the past may suggest:

2. There are those who think a bank useful, but who do not believe Congress has the power to incorporate a bank under any form.

3. There are those who admit the power of Congress to make a bank, and are in favor of some bank, but oppose the continuance of the bank now existing.

It is obvious, Sir, that, if any relief come to the country, it must proceed from some degree of union between these classes, or some of them; and the question is, Is there any common ground on which they can meet? Is there any expedient on which they will consent to lay hold to save the country? Or will they leave it a prey to their differences of opinion?

Now, Sir, among those who oppose those measures of government which have brought the present distress on the country, a great majority would prefer a continuance of the charter of the present bank for the usual term. This would be their wish, and I am one of them. We passed a bill for such a recharter through both houses, two years ago, but it was negatived by the President. I would prefer a bank of fifteen or twenty years' duration; either this or a new one; for I do not act from a regard to the pecuniary interest of the stockholders in the present bank, although I would not consent to do them any injustice. But, Sir, I see no chance of at present renewing this charter for a long period. It appears to me that the minds of members of Congress are in a state to render this hopeless. I give up, therefore, my own preference; I sacrifice my opinions to that necessity which I feel to be imposed upon me by the condition of the country. I go for relief, for efficient relief, and for immediate relief. I feel this to be demanded of me by every dictate of duty and patriotism, and by the loud voice of the country. I obey that voice, and cheerfully yield every thing to the accomplishment of the object. When I ask others to make sacrifices, I begin with making them myself. Preferring a permanent measure, I yet agree to a temporary measure. Desirous of settling the question for a length of years, I yet consent to leave it open,

in the hope of obtaining present relief and security; and I earnestly entreat all those with whom I have generally concurred in opinion, to concur in a temporary measure. If we cannot do all we would, let us do what we can. *Let us make a proposition which no reasonable man who really desires to relieve the country can object to.* That is my object, and with that single object have I prepared this bill.

And now, Sir, I will say a word to the gentlemen who have constitutional scruples about all banks. They find a bank actually existing. They find that this bank, or another like it, has existed through more than three fourths of the whole period of our government. They find Congress to have asserted the constitutional power to establish a bank, over and over again; they find all the judicial tribunals to have sanctioned the power, and four fifths of the State legislatures, and as great a proportion of the people, to have confirmed it. Now, Sir, as sensible and candid men, they cannot say that it is a clear case *against* the power. They must admit there is some reason for supposing the power to exist. The most they can say is, that the bank stands on a doubtful authority. Now, suppose that to be true. Let it be admitted that the bank stands on a doubtful title. Does it follow that they must suddenly destroy it? Will not they give it time to wind up its affairs, without producing excessive injury to the people? Shall it be brought to a sudden termination, at whatever cost, at whatever ruin to the public happiness? Besides, Sir, if the bank be unconstitutional, what is that state of things into which the country must fall when the bank charter expires? Can any thing be more unconstitutional than that state of things?

Again, Sir, I must say, that some of those States now most opposed to the bank on constitutional grounds helped to make it. Look to New York; look even to Virginia: these States had much more hand in creating this bank than Massachusetts. In 1816, there was no majority of the members from Virginia in the two houses of Congress opposed to the bank on constitutional grounds. Virginia actually gave much more support to it than Massachusetts, and a Virginia President approved the bill. May not a degree of forbearance, then, be justly expected, even though the opinion should now be that the bank stands on a doubtful right? Sir, it is enough to state these suggestions,

without arguing them at length, to candid and honorable men.

I do not, on this occasion, argue the question of the power of Congress to make a bank, but I cannot but recur to the strong view presented of the subject the other day by the honorable member from Vermont near me.* Congress, said he, having, by express grant, the power to regulate commerce between the several States, if money, if currency, silver or paper, be a thing essential to commerce, how can they regulate the commerce without regulating the currency of the country? And if the Constitution of the United States does allow the States to create banks with power to issue paper, and Congress still may not control or regulate that paper, either by a bank of its own or any other just means, how can it be said that Congress has power to regulate commerce between the States? These are questions which I cannot answer.

In the next place, Sir, as I have said, there are those who are for a new bank.

Sir, gentlemen may well be for a new bank; but they cannot be for that and for nothing else, if they really intend to relieve the country. No new bank can be established before 1836. This we all know. And what are we to do in the mean time? I am not against a new bank, when the proper time comes to make it, if that shall be the general voice of the country; but it is idle to talk of a new bank now. Those cannot feel the exigency of the moment, they do not realize the pressure of the times, who talk of a new bank and nothing but a new bank. Let them bring forward a project for a new bank whenever they please; but let us, in the mean time, not suffer the present distress of the country to go on and to increase for the want of a more immediate measure. I do not object to take the question of a new bank into consideration at any time, either in this Congress or the next; but I do object to holding out any hope to the country of immediate relief from such a measure, because we know it cannot afford such relief. We are in an emergency. Great interests are in danger of being overwhelmed; we need some plank, something to lay hold on, to buoy us up and keep our heads above water, until more effectual and permanent provision for our safety can be made.

* Mr. Prentiss.

I will now, Sir, state the general substance of the bill which I ask leave to introduce.

The first section proposes to continue the present bank for six years, but with this provision; namely, that so much of the present charter as gives the bank an exclusive right shall not be continued, but that Congress may make any other bank, if it see fit, to come into existence at any time after 1836.

This is the great feature of the bill. It continues the bank for a short period, and takes away the exclusive right. Congress is thus left at perfect liberty to make another bank whenever it chooses. When the present agitation shall have subsided, when a day of calm consideration comes, and the people have had time for deliberation, then Congress may make a permanent provision, satisfactory to itself and to the country. Can any thing be more reasonable than this? Can the bitterest enemy of the present bank refuse to give it time to wind up its affairs without distress to the people? Can the most ardent advocate of a new bank refuse, meantime, to allow the country to relieve itself by the use of the present, until a new one shall be established?

Sir, I am not dealing in plausibilities only. I mean to leave the whole question between this bank and a new one fairly open. I mean to give to neither any manner of advantage. If Congress establish a new bank, it may easily go into operation while the present is gradually retiring from operation, and the business of the country will feel no violent shock. I mean to give the present bank no claim to a renewal; but, on the contrary, the only new power conferred on it by this bill is a power to enable it to wind up its concerns.

As to the time, I think six years not too long. If we were now certain that a new bank would come into existence in 1836, I think it would be convenient for all parties that this bank should have six years to run. The new bank would hardly get into full operation under a year or two, and time is absolutely necessary to enable this bank gradually to collect its debts. A hastened collection must distress the people. With an existing debt of fifty-five millions, and pressed and solicited on all sides still further to extend its loans, in order to relieve the country, all must see that the affairs of the bank cannot be closed without intolerable pressure on the community, unless time be given for that purpose. But if six years be thought too

long I will consent to five, or to four. My own opinion is, that six years are not too long.

The second section provides, that the public moneys becoming due after the 1st of July shall be deposited in the bank and its branches as heretofore, subject, however, *at any time after this act shall be accepted*, to be removed by order of Congress. If Congress shall establish a new bank, it will of course remove the deposits into it. The effect of this provision will be to give to Congress, at all times, what rightfully belongs to it, a full control over the public purse. It separates that purse from the sword, and reestablishes the just authority of the legislature.

Then comes the section by which the bank is to pay to the treasury \$ 200,000 a year, for the six years, as compensation for the benefits of this continuance of its charter. This provision is adopted from the bill of 1832. For one, I should have been willing that a fixed percentage should have been paid, instead of this *bonus*, to be divided among the States, according to numbers; but others objected to this, and I have sought to avoid all new causes of difference.

The next section authorizes Congress to restrain the bank from issuing notes of less denomination than twenty dollars, if it shall see fit so to do, any time after March, 1836. This, too, is borrowed from the bill of 1832, and its object was fully discussed on that occasion. That object is to get rid of the circulation of all notes under five dollars, and, by so doing, to extend the specie basis of our circulation. When the States shall direct their own banks to issue no notes less than five dollars, then it is proposed that Congress shall direct the Bank of the United States to issue no notes below twenty dollars. The state of our currency will then be, as I explained the other day, that, up to five dollars, it will be silver and gold; above five dollars, it may be silver and gold, and notes of State banks; and above twenty dollars, silver and gold, and notes of State banks, and notes of the Bank of the United States. This greater use of silver and gold for common purposes and small payments, I have thought to be a desirable object, as I have often before said.

The next section looks to the winding up of the affairs of the bank; and it provides that, at any time within the last three

years of its continuance, its directors may divide among the stockholders any portion of the capital which they may have withdrawn from active operation. The remaining sections are only such as are formal and necessary; one continues the acts of Congress connected with the bank, such as those providing for forging its notes, and the other requires the acceptance of this bill by the bank in order to give it validity and effect.

Such, Mr. President, are the provisions of this bill. They are few and simple.

1. The bank is to be continued for six years.
2. The deposits are to be restored after the 1st of July.
3. Congress is to be at perfect liberty to create any new bank, at any time after March, 1836.
4. The directors, in order to wind up their concerns, may, three years before the six years expire, begin to divide the capital among the stockholders.

Mr. President, this is the measure which I propose; and it is my settled belief, that, if we cannot carry this, we can carry nothing.

I have thus, Sir, stated my opinions, and discharged my duty. I see the country laboring and struggling and panting under an enormous political evil. I propose a remedy which I am sure will produce relief, if it be adopted, and which seems to me most likely to obtain support. And now, Sir, I put it to every member of Congress, how he can resist this measure, unless by proposing another and a better. Who, among the agents and servants of the people assembled in these houses, is prepared, in the present distressed state of the country, to say, that he will oppose every thing, and propose nothing? For one, Sir, I can only say, that I have been driven to this proposition by an irresistible impulse of obligation to the country. If I had been suddenly called to my great reckoning in another world, I should have felt that one duty was neglected, if I had had no measure to recommend, no expedient to propose, no hope to hold out to this suffering community.

As to the success of this bill, Sir, or any other, I have only to repeat what I have so often said, that every thing rests with the people themselves. In the distracted state of the public counsels, any measure of relief can only be obtained by the decisive demand of the public will.

By an exercise of executive power, which I believe to be illegal, and which all must see to have been injurious, by an unrelenting adherence to the measure which has thus been adopted, in spite of all consequences, and by the force of those motives which influence men to support the measure, though they entirely disapprove it, the country is brought to a condition such as it never before witnessed, and which it cannot long bear. But it is not a condition for despair. Nothing will ruin the country, if the people themselves will undertake its safety; and nothing can save it, if *they* leave that safety in any hands but their own.

Would to God, Sir, that I could draw around me all these twelve millions of people! Would to God that I could speak audibly to every independent elector in the whole land! I would not say to them, vainly and arrogantly, that their safety and happiness require the adoption of any measure recommended by me. But I would say to them, with the sincerest conviction that ever animated man's heart, that their safety and happiness *do* require their own prompt and patriotic attention to the public concerns, their own honest devotion to the welfare of the state. I would say to them, that neither this measure, nor any measure, can be adopted, except by the cogent and persisting action of popular opinion. I would say to them, that the public revenues cannot be restored to their accustomed custody, that they cannot be again placed under the control of Congress, that the violation of law cannot be redressed, but by manifestations, not to be mistaken, of public sentiment. I would say to them, that the Constitution and the laws, their own rights and their own happiness, all depend on themselves; and if they esteem these of any value, if they were not too dearly bought by the blood of their fathers, if they be an inheritance fit to be transmitted to their posterity, I would beseech them, I would beseech them, to come now to their salvation.

The Presidential Protest*

MR. PRESIDENT,—I feel the magnitude of this question. We are coming to a vote which cannot fail to produce important effects on the character of the Senate and the character of the government.

Unhappily, Sir, the Senate finds itself involved in a controversy with the President of the United States; a man who has rendered most distinguished services to his country, who has hitherto possessed a degree of popular favor perhaps never exceeded, and whose honesty of motive and integrity of purpose are still admitted by those who maintain that his administration has fallen into lamentable errors.

On some of the interesting questions in regard to which the President and Senate hold opposite opinions, the more popular branch of the legislature concurs with the executive. It is not to be concealed that the Senate is engaged against imposing odds. It can sustain itself only by its own prudence and the justice of its cause. It has no patronage by which to secure friends; it can raise up no advocates through the dispensation of favors, for it has no favors to dispense. Its very constitution, as a body whose members are elected for a long term, is capable of being rendered obnoxious, and is daily made the subject of opprobrious remark. It is already denounced as independent of the people, and aristocratic. Nor is it, like the other house, powerful in its numbers; not being, like that, so large as that its members come constantly in direct and extensive contact with the whole people. Under these disadvantages, Sir, which,

* A Speech delivered in the Senate of the United States, on the 7th of May, 1834, on the President's Protest.

See note to page 47.

we may be assured, will be pressed and urged to the utmost length, there is but one course for us. The Senate must stand on its rendered reasons. It must put forth the grounds of its proceedings, and it must then rely on the intelligence and patriotism of the people to carry it through the contest.

As an individual member of the Senate, it gives me great pain to be engaged in such a conflict with the executive government. The occurrences of the last session are fresh in the recollection of all of us; and having felt it to be my duty, at that time, to give my cordial support to highly important measures of the administration, I ardently hoped that nothing might occur to place me afterwards in an attitude of opposition. In all respects, and in every way, it would have been far more agreeable to me to find nothing in the measures of the executive government which I could not cheerfully support. The present occasion of difference has not been sought or made by me. It is thrust upon me, in opposition to strong opinions and wishes, on my part not concealed. The interference with the public deposits dispelled all hope of continued concurrence with the administration, and was a measure so uncalled for, so unnecessary, and, in my judgment, so illegal and indefensible, that, with whatever reluctance it might be opposed by me, opposition was unavoidable.

The paper before us has grown out of this interference. It is a paper which cannot be treated with indifference. The doctrines which it advances, the circumstances which have attended its transmission to the Senate, and the manner in which the Senate may now dispose of it, will form a memorable era in the history of the government. We are either to enter it on our journals, concur in its sentiments, and submit to its rebuke, or we must answer it, with the respect due to the chief magistrate, but with such animadversion on its doctrines as they deserve, and with the firmness imposed upon us by our public duties.

I shall proceed, then, Sir, to consider the circumstances which gave rise to this Protest; to examine the principles which it attempts to establish; and to compare those principles with the Constitution and the laws.

On the 28th day of March, the Senate adopted a resolution declaring that, "in the late executive proceedings in relation to the public revenue, the President had assumed a power not conferred by the Constitution and laws, but in derogation of both." In that resolution I concurred.

It is not a direct question, now again before us, whether the President really had assumed such illegal power; that point is decided, so far as the Senate ever can decide it. But the Protest denies that, supposing the President to have assumed such illegal power, the Senate could properly pass the resolution; or, what is the same thing, it denies that the Senate could, in this way, express any opinion about it. It denies that the Senate has any right, by resolution, in this or any other case, to express disapprobation of the President's conduct, let that conduct be what it may; and this, one of the leading doctrines of the Protest, I propose to consider. But as I concurred in the resolution of the 28th of March, and did not trouble the Senate, at that time, with any statement of my own reasons, I will avail myself of this opportunity to explain, shortly, what those reasons were.

In the first place, then, I have to say, that I did not vote for the resolution on the mere ground of the removal of Mr. Duane from the office of Secretary of the Treasury. Although I disapprove of the removal altogether, yet the power of removal does exist in the President, according to the established construction of the Constitution; and therefore, although in a particular case it may be abused, and, in my opinion, was abused in this case, yet its exercise cannot be justly said to be an assumption or usurpation. We must all agree that Mr. Duane is out of office. He has, therefore, been removed by a power constitutionally competent to remove him, whatever may be thought of the exercise of that power under the circumstances of the case.

If, then, the act of removing the Secretary be not the assumption of power which the resolution declares, in what is that assumption found? Before giving a precise answer to this inquiry, allow me to recur to some of the principal previous events.

At the end of the last session of Congress, the public moneys of the United States were still in their proper place. That place was fixed by the law of the land, and no power of change was conferred on any other human being than the Secretary of the Treasury. On him the power of change was conferred, to be exercised by himself, if emergency should arise, and to be exercised for reasons which he was bound to lay before Con-

gress. No other officer of the government had the slightest pretence of authority to lay his hand on these moneys for the purpose of changing the place of their custody. All the other heads of departments together could not touch them. The President could not touch them. The power of change was a trust confided to the discretion of the Secretary, and to his discretion alone. The President had no more authority to take upon himself this duty, thus assigned expressly by law to the Secretary, than he had to make the annual report to Congress, or the annual commercial statements, or to perform any other service which the law specially requires of the Secretary. He might just as well sign the warrants for moneys, in the ordinary daily disbursements of government, instead of the Secretary. The statute had assigned the especial duty of removing the deposits, if removed at all, to the Secretary of the Treasury, and to him alone. The consideration of the propriety or necessity of removal must be the consideration of the Secretary; the decision to remove, his decision; and the act of removal, his act.

Now, Sir, on the 18th day of September last, a resolution was taken to remove these deposits from their legislative, that is to say, their legal custody. *Whose resolution was this?* On the 1st of October, they were removed. *By whose power was this done?* The papers necessary to accomplish the removal (that is, the orders and drafts) are, it is true, signed by the Secretary. The President's name is not subscribed to them; nor does the Secretary, in any of them, recite or declare that he does the act by direction of the President, or on the President's responsibility. In form, the whole proceeding is the proceeding of the Secretary, and, as such, had the legal effect. The deposits were removed. But whose act was it, in truth and reality? Whose will accomplished it? On whose responsibility was it adopted?

These questions are all explicitly answered by the President himself, in the paper, under his own hand, read to the Cabinet on the 18th of September, and published by his authority. In this paper the President declares, in so many words, that he begs his Cabinet to consider the proposed measure as his own; that its responsibility has been assumed by him; and that he names the first day of October as a period proper for its execution.

Now, Sir, it is precisely this which I deem an assumption of power not conferred by the Constitution and laws. I think the law did not give this authority to the President, nor impose on him the responsibility of its exercise. It is evident that, in this removal, the Secretary was in reality nothing but the scribe; he was the pen in the President's hand, and no more. Nothing depended on his discretion, his judgment, or his responsibility. The removal, indeed, has been admitted and defended in the Senate, as the direct act of the President himself. This, Sir, is what I call assumption of power. If the President had issued an order for the removal of the deposits in his own name, and under his own hand, it would have been an illegal order, and the bank would not have been at liberty to obey it. For the same reason, if the Secretary's order had recited that it was issued by the President's direction, and on the President's authority, it would have shown on its face that it was illegal and invalid. No one can doubt that. The act of removal, to be lawful, must be the *bonâ fide* act of the Secretary; *his* judgment, the result of *his* deliberations, the volition of *his* mind. All are able to see the difference between the power to remove the Secretary from office, and the power to control him, in all or any of his duties, while in office. The law charges the officer, whoever he may be, with the performance of certain duties. The President, with the consent of the Senate, appoints an individual to be such officer; and this individual he may remove, if he so please; but, until removed, he is the officer, and remains charged with the duties of his station, duties which nobody else can perform, and for the neglect or violation of which he is liable to be impeached.

The distinction is visible and broad between the power of removal and the power to control an officer not removed. The President, it is true, may terminate his political life; but he cannot control his powers and functions, and act upon him as a mere machine, while he is allowed to live. The power of control and direction, nowhere given, certainly, by any express provision of the Constitution or laws, is derived, by those who maintain it, from the right of removal; that is to say, it is a constructive power; it has no express warrant in the Constitution. A very important power, then, is raised by construction in the first place; and being thus raised, it becomes a fountain out of

which other important powers, raised also by construction, are to be supplied. There is no little danger that such a mode of reasoning may be carried too far. It cannot be maintained that the power of direct control necessarily flows from the power of removal. Suppose it had been decided in 1789, when the question was debated, that the President does not possess the power of removal; will it be contended, that, in that case, his right of interference with the acts and duties of executive officers would be less than it now is? The reason of the thing would seem to be the other way. If the President may remove an incumbent when he becomes satisfied of his unfaithfulness and incapacity, there would appear to be less necessity to give him also a right of control, than there would be if he could not remove him.

We may try this question by supposing it to arise in a judicial proceeding. If the Secretary of the Treasury were impeached for removing the deposits, could he justify himself by saying that he did it by the President's direction? If he could, then no executive officer could ever be impeached, who obeys the President; and the whole notion of making such officers impeachable at all would be farcical. If he could not so justify himself (and all will allow he could not), the reason can only be that the act of removal is his own act; the power, a power confided to him, for the just exercise of which the law looks to his discretion, his honesty, and his direct responsibility.

Now, Sir, the President wishes the world to understand that he himself decided on the question of the removal of the deposits; that he took the whole responsibility of the measure upon himself; that he wished it to be considered *his own act*; that he not only himself decided that the thing should be done, but regulated its details also, and named the day for carrying it into effect.

I have always entertained a very erroneous view of the partition of powers, and of the true nature of official responsibility under our Constitution, if this be not a plain case of the assumption of power.

The legislature had fixed a place, by law, for the keeping of the public money. They had, at the same time and by the same law, created and conferred a power of removal, to be exercised contingently. This power they had vested in the Secretary, by express words. The law did not say that the deposits should

be made in the bank, unless the President should order otherwise; but it did say that they should be made there, unless the Secretary of the Treasury should order otherwise. I put it to the plain sense and common candor of all men, whether the discretion thus to be exercised over the subject was not the Secretary's own personal discretion; and whether, therefore, the interposition of the authority of another, acting directly and conclusively on the subject, deciding the whole question, even in its particulars and details, be not an assumption of power?

The Senate regarded this interposition as an encroachment by the executive on other branches of the government; as an interference with the legislative disposition of the public treasure. It was strongly and forcibly urged, yesterday, by the honorable member from South Carolina, that the true and only mode of preserving any balance of power, in mixed governments, is to keep an exact balance. This is very true, and to this end encroachment must be resisted at the first step. The question is, therefore, whether, upon the true principles of the Constitution, this exercise of power by the President can be justified. Whether the consequences be prejudicial or not, if there be an illegal exercise of power, it is to be resisted in the proper manner. Even if no harm or inconvenience result from transgressing the boundary, the intrusion is not to be suffered to pass unnoticed. Every encroachment, great or small, is important enough to awaken the attention of those who are intrusted with the preservation of a constitutional government. We are not to wait till great public mischiefs come, till the government is overthrown, or liberty itself put into extreme jeopardy. We should not be worthy sons of our fathers were we so to regard great questions affecting the general freedom. Those fathers accomplished the Revolution on a strict question of principle. The Parliament of Great Britain asserted a right to tax the Colonies in all cases whatsoever; and it was precisely on this question that they made the Revolution turn. The amount of taxation was trifling, but the claim itself was inconsistent with liberty; and that was, in their eyes, enough. It was against the recital of an act of Parliament, rather than against any suffering under its enactments, that they took up arms. They went to war against a preamble. They fought seven years against a declaration. They poured out their treasures and their blood like water, in a con-

test against an assertion which those less sagacious and not so well schooled in the principles of civil liberty would have regarded as barren phraseology, or mere parade of words. They saw in the claim of the British Parliament a seminal principle of mischief, the germ of unjust power; they detected it, dragged it forth from underneath its plausible disguises, struck at it; nor did it elude either their steady eye or their well-directed blow till they had extirpated and destroyed it, to the smallest fibre. On this question of principle, while actual suffering was yet afar off, they raised their flag against a power, to which, for purposes of foreign conquest and subjugation, Rome, in the height of her glory, is not to be compared; a power which has dotted over the surface of the whole globe with her possessions and military posts, whose morning drum-beat, following the sun, and keeping company with the hours, circles the earth with one continuous and unbroken strain of the martial airs of England.

The necessity of holding strictly to the principle upon which free governments are constructed, and to those precise lines which fix the partitions of power between different branches, is as plain, if not as cogent, as that of resisting, as our fathers did, the strides of the parent country against the rights of the Colonies; because, whether the power which exceeds its just limits be foreign or domestic, whether it be the encroachment of all branches on the rights of the people, or that of one branch on the rights of others, in either case the balanced and well-adjusted machinery of free government is disturbed, and, if the derangement go on, the whole system must fall.

But the case before us is not a case of merely theoretic infringement; nor is it one of trifling importance. Far otherwise. It respects one of the highest and most important of all the powers of government; that is to say, the custody and control of the public money. The act of removing the deposits, which I now consider as the President's act, and which his friends on this floor defend as his act, took the national purse from beneath the security and guardianship of the law, and disposed of its contents, in parcels, in such places of deposit as he chose to select. At this very moment, every dollar of the public treasure is subject, so far as respects its custody and safe-keeping, to his unlimited control. We know not where it is to-day; still less do we know where it may be to-morrow.

But, Mr. President, this is not all. There is another part of the case, which has not been so much discussed, but which appears to me to be still more indefensible in its character. It is something which may well teach us the tendency of power to move forward, with accelerated pace, if it be allowed to take the first step. The Bank of the United States, in addition to the services rendered to the treasury, gave for its charter, and for the use of the public deposits, a *bonus* or outright sum of one million and a half of dollars. This sum was paid by the bank into the treasury soon after the commencement of its charter. In the act which passed both houses for renewing the charter, in 1832, it was provided that the bank, for the same consideration, should pay two hundred thousand dollars a year during the period for which it was proposed to renew it. A similar provision is in the bill which I asked leave to introduce some weeks ago. Now, Sir, this shows that the custody of the deposits is a benefit for which a bank may well afford to pay a large annual sum. The banks which now hold the deposits pay nothing to the public; they give no *bonus*, they pay no annuity. But this loss of so much money is not the worst part of the case, nor that which ought most to alarm us. Although they pay nothing to the public, they do pay, nevertheless, such sums, and for such uses, as may be agreed upon between themselves and the executive government. We are officially informed that an officer is appointed by the Secretary of the Treasury to inspect or superintend these selected banks; and this officer is compensated by a salary fixed by the executive, agreed to by the banks, and paid by them. I ask, Sir, if there can be a more irregular or a more illegal transaction than this? Whose money is it out of which this salary is paid? Is it not money justly due to the United States, and paid, because it is so due, for the advantage of holding the deposits? If a dollar is received on that account, is not its only true destination into the general treasury of the government? And who has authority, without law, to create an office, to fix a salary, and to pay that salary out of this money? Here is an inspector or supervisor of the deposit banks. But what law has provided for such an officer? What commission has he received? Who concurred in his appointment? What oath does he take? How is he to be punished or impeached if he colludes with any of these banks to embezzle the public money

or defraud the government? The value of the use of this public money to the deposit banks is probably two hundred thousand dollars a year; or, if less than that, it is yet, certainly, a very great sum. May the President appoint whatever officers he pleases, with whatever duties he pleases, and pay them as much as he pleases, out of the moneys thus paid by the banks, for the sake of having the deposits?

Mr. President, the executive claim of power is exactly this, that the President may keep the money of the public in whatever banks he chooses, on whatever terms he chooses, and apply the sums which these banks are willing to pay for its use to whatever purposes he chooses. These sums are not to come into the general treasury. They are to be appropriated before they get there; they are never to be brought under the control of Congress; they are to be paid to officers and agents not known to the law, not nominated to the Senate, and responsible to nobody but the executive itself. I ask gentlemen if all this be lawful. Are they prepared to defend it? Will they stand up and justify it? In my opinion, Sir, it is a clear and most dangerous assumption of power. It is the creation of office without law; the appointment to office without consulting the Senate; the establishment of a salary without law; and the payment of that salary out of a fund which itself is derived from the use of the public treasures. This, Sir, is my other reason for concurring in the vote of the 28th of March; and on these grounds I leave the propriety of that vote, so far as I am concerned with it, to be judged of by the country.

But, Sir, the President denies the power of the Senate to pass any such resolution, on any ground whatever. Suppose the declaration contained in the resolution to be true; suppose the President had, in fact, assumed powers not granted to him; does the Senate possess the right to declare its opinion, affirming this fact, or does it not? I maintain that the Senate does possess such a power; the President denies it.

Mr. President, we need not look far, nor search deep, for the foundation of this right in the Senate. It is close at hand, and clearly visible. In the first place, it is the right of self-defence. In the second place, it is a right founded on the duty of representative bodies, in a free government, to defend the public liberty against encroachment. We must presume that the Senate

honestly entertained the opinion expressed in the resolution of the 28th of March; and, entertaining that opinion, its right to express it is but the necessary consequence of its right to defend its own constitutional authority, as one branch of the government. This is its clear right, and this, too, is its imperative duty.

If one or both the other branches of the government happen to do that which appears to us inconsistent with the constitutional rights of the Senate, will any one say that the Senate is yet bound to be passive, and to be silent? to do nothing, and to say nothing? Or, if one branch appears to encroach on the rights of the other two, have these two no power of remonstrance, complaint, or resistance? Sir, the question may be put in a still more striking form. Has the Senate a right *to have an opinion* in a case of this kind? If it may have an opinion, how is that opinion to be ascertained but by resolution and vote? The objection must go the whole length; it must maintain that the Senate has not only no right to express opinions, but no right to form opinions, on the conduct of the executive government, though in matters intimately affecting the powers and duties of the Senate itself. It is not possible, Sir, that such a doctrine can be maintained for a single moment. All political bodies resist what they deem encroachments by resolutions expressive of their sentiments, and their purpose to resist such encroachments. When such a resolution is presented for its consideration, the question is, whether it be true; not whether the body has authority to pass it, admitting it to be true. The Senate, like other public bodies, is perfectly justifiable in defending, in this mode, either its legislative or executive authority. The usages of Parliament, the practice in our State legislatures and assemblies, both before and since the Revolution, and precedents in the Senate itself, fully maintain this right. The case of the Panama mission is in point. In that case, Mr. Branch, from North Carolina, introduced a resolution, which, after reciting that the President, in his annual message and in his communication to the Senate, had asserted that he possessed an authority to make certain appointments, *although the appointments had not been made*, went on to declare that "*a silent acquiescence on the part of this body, may, at some future time, be drawn into dangerous precedent*"; and to resolve, therefore, that the President does not possess the right or power said to be

claimed by him. This resolution was discussed, and finally laid on the table. But the question discussed was, whether the resolution was correct, in fact and principle; not whether the Senate had any right to pass such resolution. So far as I remember, no one pretended that, if the President had exceeded his authority, the Senate might not so declare by resolution. No one ventured to contend that, whether the rights of the Senate were invaded or not, the Senate must hold its peace.

The Protest labors strenuously to show that the Senate adopted the resolution of the 28th of March, under its *judicial* authority. The reason of this attempt is obvious enough. If the Senate, in its judicial character, has been trying the President, then he has not had a regular and formal trial; and, on that ground, it is hoped the public sympathy may be moved. But the Senate has acted not in its judicial, but in its legislative capacity. As a legislative body, it has defended its own just authority, and the authority of the other branch of the legislature. Whatever attacks our own rights and privileges, or whatever encroaches on the power of both houses, we may oppose and resist, by declaration, resolution, or other similar proceedings. If we look to the books of precedents, if we examine the journals of legislative bodies, we find everywhere instances of such proceedings.

It is to be observed, Sir, that the Protest imposes silence on the House of Representatives as well as on the Senate. It declares that no power is conferred on either branch of the legislature, to consider or decide upon official acts of the executive, for the purpose of censure, and without a view to legislation or impeachment. This, I think, Sir, is pretty high-toned pretension. According to this doctrine, neither house could assert its own rights, however the executive might assail them; neither house could point out the danger to the people, however fast executive encroachment might be extending itself, or whatever danger it might threaten to the public liberties. If the two houses of Congress may not express an opinion of executive conduct by resolution, there is the same reason why they should not express it in any other form, or by any other mode of proceeding. Indeed, the Protest limits both houses, expressly, to the case of impeachment. If the House of Representatives are not about to impeach the President, they have nothing to say of his

measures or of his conduct; and unless the Senate are engaged in trying an impeachment, their mouths, too, are stopped. It is the practice of the President to send us an annual message, in which he rehearses the general proceedings of the executive for the past year. This message we refer to our committees for consideration. But, according to the doctrine of the Protest, they can express no opinion upon any executive proceeding upon which it gives information. Suppose the President had told us, in his last annual message, what he had previously told us in his cabinet paper, that the removal of the deposits was *his* act, done on *his* responsibility; and that the Secretary of the Treasury had exercised no discretion, formed no judgment, presumed to have no opinion whatever, on the subject. This part of the message would have been referred to the committee on finance; but what could they say? They think it shows a plain violation of the Constitution and the laws; but the President is not impeached; therefore they can express no censure. They think it a direct invasion of legislative power, but they must not say so. They may, indeed, commend, if they can. The grateful business of praise is lawful to them; but if, instead of commendation and applause, they find cause for disapprobation, censure, or alarm, the Protest enjoins upon them absolute silence.

Formerly, Sir, it was a practice for the President to meet both houses, at the opening of the session, and deliver a speech, as is still the usage of some of the State legislatures. To this speech there was an answer from each house, and those answers expressed, freely, the sentiments of the house upon all the merits and faults of the administration. The discussion of the topics contained in the speech, and the debate on the answers, usually drew out the whole force of parties, and lasted sometimes a week. President Washington's conduct, in every year of his administration, was thus freely and publicly canvassed. He did not complain of it; he did not doubt that both houses had a perfect right to comment, with the utmost latitude, consistent with decorum, upon all his measures. Answers, or amendments to answers, were not unfrequently proposed, very hostile to his own course of public policy, if not sometimes bordering on disrespect. And when they did express respect and regard, there were votes ready to be recorded against the expression of those

sentiments. To all this President Washington took no exception; for he well knew that these, and similar proceedings, belonged to the power of popular bodies. But if the President were now to meet us with a speech, and should inform us of measures, adopted by himself in the recess, which should appear to us the most plain, palpable, and dangerous violations of the Constitution, we must, nevertheless, either keep respectful silence, or fill our answer merely with courtly phrases of approbation.

Mr. President, I know not who wrote this Protest, but I confess I am astonished, truly astonished, as well at the want of knowledge which it displays of constitutional law, as at the high and dangerous pretensions which it puts forth. Neither branch of the legislature can express censure upon the President's conduct! Suppose, Sir, that we should see him enlisting troops and raising an army, can we say nothing, and do nothing? Suppose he were to declare war against a foreign power, and put the army and the fleet in action; are we still to be silent? Suppose we should see him borrowing money on the credit of the United States; are we yet to wait for impeachment? Indeed, Sir, in regard to this borrowing money on the credit of the United States, I wish to call the attention of the Senate, not only to what might happen, but to what has actually happened. We are informed that the Post-Office Department, a department over which the President claims the same control as over the rest, *has actually borrowed near half a million of money on the credit of the United States.*

Mr. President, the first power granted to Congress by the Constitution is the power to lay taxes; the second, the power to borrow money on the credit of the United States. Now, Sir, where does the executive find its authority, in or through any department, to borrow money without authority of Congress? This proceeding appears to me wholly illegal, and reprehensible in a very high degree. It may be said that it is not true that this money is borrowed on the credit of the United States, but that it is borrowed on the credit of the Post-Office Department. But that would be mere evasion. The department is but a name. It is an office, and nothing more. The banks have not lent this money to any officer. If Congress should abolish the whole department to-morrow, would the banks not expect the

United States to replace this borrowed money? The money, then, is borrowed on the credit of the United States, an act which Congress alone is competent to authorize. If the Post-Office Department may borrow money, so may the War Department and the Navy Department. If half a million may be borrowed, ten millions may be borrowed. What, then, if this transaction shall be justified, is to hinder the executive from borrowing money to maintain fleets and armies, or for any other purpose, at his pleasure, without any authority of law? Yet even this, according to the doctrine of the Protest, we have no right to complain of. We have no right to declare that an executive department has violated the Constitution and broken the law, by borrowing money on the credit of the United States. Nor could we make a similar declaration, if we were to see the executive, by means of this borrowed money, enlisting armies and equipping fleets. And yet, Sir, the President has found no difficulty, heretofore, in expressing his opinions, *in a paper not called for by the exercise of any official duty*, upon the conduct and proceedings of the two houses of Congress. At the commencement of this session, he sent us a message, commenting on the land bill which the two houses passed at the end of the last session. That bill he had not approved, nor had he returned it with objections. Congress was dissolved; and the bill, therefore, was completely dead, and could not be revived. No communication from him could have the least possible effect as an official act. Yet he saw fit to send a message on the subject, and in that message he very freely declares his opinion that the bill which had passed both houses *began with an entire subversion of every one of the compacts by which the United States became possessed of their Western domain*; that one of its provisions *was in direct and undisguised violation of the pledge given by Congress to the States*; that the Constitution provides that these compacts shall be untouched by the legislative power, which can only make needful rules and regulations; and that all beyond that is *an assumption of undelegated power*.

These are the terms in which the President speaks of an act of the two houses; not in an official paper, not in a communication which it was necessary for him to make to them; but in a message, adopted only as a mode through which to make public these opinions. After this, it would seem too late to enjoin on

the houses of Congress a total forbearance from all comment on the measures of the executive.

Not only is it the right of both houses, or of either, to resist, by vote, declaration, or resolution, whatever it may deem an encroachment of executive power, but it is also undoubtedly the right of either house to oppose, in like manner, any encroachment by the other. The two houses have each its own appropriate powers and authorities, which it is bound to preserve. They have, too, different constituents. The members of the Senate are representatives of States; and it is in the Senate alone that the four-and-twenty States, as political bodies, have a direct influence in the legislative and executive powers of this government. He is a strange advocate of State rights, who maintains that this body, thus representing the States, and thus being the strictly federal branch of the legislature, may not assert and maintain all and singular its own powers and privileges, against either or both of the other branches.

If any thing be done or threatened derogatory to the rights of the States, as secured by the organization of the Senate, may we not lift up our voices against it? Suppose the House of Representatives should vote that the Senate ought not to propose amendments to revenue bills; would it be the duty of the Senate to take no notice of such proceeding? Or, if we were to see the President issuing commissions to office to persons who had never been nominated to the Senate, are we not to remonstrate?

Sir, there is no end of cases, no end of illustrations. The doctrines of the Protest, in this respect, cannot stand the slightest scrutiny; they are blown away by the first breath of discussion.

And yet, Sir, it is easy to perceive why this right of declaring its sentiments respecting the conduct of the executive is denied to either house, in its legislative capacity. It is merely that the Senate might be presented in the odious light of *trying* the President, judicially, without regular accusation or hearing. The Protest declares that the President is *charged with a crime, and, without hearing or trial, found guilty and condemned*. This is evidently an attempt to appeal to popular feeling, and to represent the President as unjustly treated and unfairly tried. Sir, it is a false appeal. The President has not been tried at all; he has not been accused; he has not been charged with crime; he has not been condemned. Accusation, trial, and sentence are

terms belonging to judicial proceedings. But the Senate has been engaged in no such proceeding. The resolution of the 28th of March was not an exercise of judicial power, either in form, in substance, or in intent. Every body knows that the Senate can exercise no judicial power until articles of impeachment are brought before it. It is then to proceed, by accusation and answer, hearing, trial, and judgment. But there has been no impeachment, no answer, no hearing, no judgment. All that the Senate did was to pass a resolution, in legislative form, declaring its opinion of certain acts of the executive. This resolution imputed no crime; it charged no corrupt motive; it proposed no punishment. It was directed, not against the President personally, but against the act; and that act it declared to be, in its judgment, an assumption of authority not warranted by the Constitution.

It is in vain that the Protest attempts to shift the resolution to the judicial character of the Senate. The case is too plain for such an argument to be plausible. But, in order to lay some foundation for it, the Protest, as I have already said, contends that neither the Senate nor the House of Representatives can express its opinions on the conduct of the President, except in some form connected with impeachment; so that if the power of impeachment did not exist, these two houses, though they be representative bodies, though one of them be filled by the immediate representatives of the people, though they be constituted like other popular and representative bodies, could not utter a syllable, although they saw the executive either trampling on their own rights and privileges, or grasping at absolute authority and dominion over the liberties of the country! Sir, I hardly know how to speak of such claims of impunity for executive encroachment. I am amazed that any American citizen should draw up a paper containing such lofty pretensions; pretensions which would have been met with scorn in England, at any time since the Revolution of 1688. A man who should stand up, in either house of the British Parliament, to maintain that the house could not, by vote or resolution, maintain its own rights and privileges, would make even the Tory benches hang their heads for very shame.

There was, indeed, a time when such proceedings were not allowed. Some of the kings of the Stuart race would not

tolerate them. A signal instance of royal displeasure with the proceedings of Parliament occurred in the latter part of the reign of James the First. The House of Commons had spoken, on some occasion, "of its own undoubted rights and privileges." The king thereupon sent them a letter, declaring that *he would not allow that they had any undoubted rights, but that what they enjoyed they might still hold by his own royal grace and permission.* Sir Edward Coke and Mr. Granville were not satisfied with this title to their privileges; and, under their lead, the house entered on its journals a resolution asserting its privileges, *as its own undoubted right*, and manifesting a determination to maintain them as such. This, says the historian, so enraged his Majesty, that he sent for the journal, had it brought into the Council, and there, in the presence of his lords and great officers of state, tore out the offensive resolution with his own royal hand. He then dissolved Parliament, and sent its most refractory members to the Tower. I have no fear, certainly, Sir, that this English example will be followed, on this occasion, to its full extent; nor would I insinuate that any thing outrageous has been thought of, or intended, except outrageous pretensions; but such pretensions I must impute to the author of this Protest, whoever that author may be.

When this and the other house shall lose the freedom of speech and debate; when they shall surrender the rights of publicly and freely canvassing all important measures of the executive; when they shall not be allowed to maintain their own authority and their own privileges by vote, declaration, or resolution,—they will then be no longer free representatives of a free people, but slaves themselves, and fit instruments to make slaves of others.

The Protest, Mr. President, concedes what it doubtless regards as a liberal right of discussion to the people themselves. But its language, even in acknowledging this right of the *people* to discuss the conduct of their servants, is qualified and peculiar. The free people of the United States, it declares, have an undoubted right to discuss the official conduct of the President in such language and form as they may think proper, "subject only to the restraints of truth and justice." But, then, who is to be judge of this truth and justice? Are the people to judge for themselves, or are others to judge for them? The

Protest is here speaking of *political* rights, and not moral rights; and if restraints are imposed on *political* rights, it must follow, of course, that others are to decide whenever the case arises whether these restraints have been violated. It is strange that the writer of the Protest did not perceive that, by using this language, he was pushing the President into a direct avowal of the doctrines of 1798. The text of the Protest and the text of the obnoxious act* of that year are nearly identical.

But, Sir, if the people have a right to discuss the official conduct of the executive, so have their representatives. We have been taught to regard a representative of the people as a sentinel on the watch-tower of liberty. Is he to be blind, though visible danger approaches? Is he to be deaf, though sounds of peril fill the air? Is he to be dumb, while a thousand duties impel him to raise the cry of alarm? Is he not, rather, to catch the lowest whisper which breathes intention or purpose of encroachment on the public liberties, and to give his voice breath and utterance at the first appearance of danger? Is not his eye to traverse the whole horizon with the keen and eager vision of an unhooded hawk, detecting, through all disguises, every enemy advancing, in any form, towards the citadel which he guards? Sir, this watchfulness for public liberty; this duty of foreseeing danger and proclaiming it; this promptitude and boldness in resisting attacks on the Constitution from any quarter; this defence of established landmarks; this fearless resistance of whatever would transcend or remove them,—all belong to the representative character, are interwoven with its very nature. If deprived of them, an active, intelligent, faithful agent of the people will be converted into an unresisting and passive instrument of power. A representative body, which gives up these rights and duties, gives itself up. It is a representative body no longer. It has broken the tie between itself and its constituents, and henceforth is fit only to be regarded as an inert, self-sacrificed mass, from which all appropriate principle of vitality has departed for ever.

I have thus endeavored to vindicate the right of the Senate to pass the resolution of the 28th of March, notwithstanding the denial of that right in the Protest.

* Commonly called the Sedition Act, approved 14th July, 1798.

But there are other sentiments and opinions expressed in the Protest, of the very highest importance, and which demand nothing less than our utmost attention.

The first object of a free people is the preservation of their liberty; and liberty is only to be preserved by maintaining constitutional restraints and just divisions of political power. Nothing is more deceptive or more dangerous than the pretence of a desire to simplify government. The simplest governments are despotisms, the next simplest, limited monarchies; but all republics, all governments of law, must impose numerous limitations and qualifications of authority, and give many positive and many qualified rights. In other words, they must be subject to rule and regulation. This is the very essence of free political institutions. The spirit of liberty is, indeed, a bold and fearless spirit; but it is also a sharp-sighted spirit; it is a cautious, sagacious, discriminating, far-seeing intelligence; it is jealous of encroachment, jealous of power, jealous of man. It demands checks; it seeks for guards; it insists on securities; it intrenches itself behind strong defences, and fortifies itself with all possible care against the assaults of ambition and passion. It does not trust the amiable weaknesses of human nature, and therefore it will not permit power to overstep its prescribed limits, though benevolence, good intent, and patriotic purpose come along with it. Neither does it satisfy itself with flashy and temporary resistance to illegal authority. Far otherwise. It seeks for duration and permanence. It looks before and after; and, building on the experience of ages which are past, it labors diligently for the benefit of ages to come. This is the nature of constitutional liberty; and this is *our* liberty, if we will rightly understand and preserve it. Every free government is necessarily complicated, because all such governments establish restraints, as well on the power of government itself as on that of individuals. If we will abolish the distinction of branches, and have but one branch; if we will abolish jury trials, and leave all to the judge; if we will then ordain that the legislator shall himself be that judge; and if we will place the executive power in the same hands, we may readily simplify government. We may easily bring it to the simplest of all possible forms, a pure despotism. But a separation of departments, so far as practicable, and the preservation of clear lines of division between them, is the fun-

damental idea in the creation of all our constitutions; and, doubtless, the continuance of regulated liberty depends on maintaining these boundaries.

In the progress, Sir, of the governments of the United States, we seem exposed to two classes of dangers or disturbances; one external, the other internal. It may happen that collisions arise between this government and the governments of the States. That case belongs to the first class. A memorable instance of this kind occurred last year. It was my conscientious opinion, on that occasion, that the authority claimed by an individual State* was subversive of the just powers of this government, and, indeed, incompatible with its existence. I gave a hearty coöperation, therefore, to measures which the crisis seemed to require. We have now before us what appears, to my judgment, to be an instance of the latter kind. A contest has arisen between different branches of the same government, interrupting their harmony, and threatening to disturb their balance. It is of the highest importance, therefore, to examine the question carefully, and to decide it justly.

The separation of the powers of government into three departments, though all our constitutions profess to be founded on it, has, nevertheless, never been perfectly established in any government of the world, and perhaps never can be. The general principle is of inestimable value, and the leading lines of distinction sufficiently plain; yet there are powers of so undecided a character, that they do not seem necessarily to range themselves under either head. And most of our constitutions, too, having laid down the general principle, immediately create exceptions. There do not exist, in the general science of government, or the received maxims of political law, such precise definitions as enable us always to say of a given power whether it be legislative, executive, or judicial. And this is one reason, doubtless, why the Constitution, in conferring power on all the departments, proceeds not by general definition, but by specific enumeration. And, again, it grants a power in general terms, but yet, in the same or some other article or section, imposes a limitation or qualification on the grant; and the grant and the limitation must, of course, be construed together. Thus the Constitution says that all legislative power, therein granted,

* South Carolina.

shall be vested in Congress, which Congress shall consist of a Senate and House of Representatives; and yet, in another article, it gives to the President a qualified negative over all acts of Congress. So the Constitution declares that the judicial power shall be vested in one Supreme Court, and such inferior courts as Congress may establish. It gives, nevertheless, in another provision, judicial power to the Senate; and, in like manner, though it declares that the executive power shall be vested in the President, using, in the immediate context, no words of limitation, yet it elsewhere subjects the treaty-making power, and the appointing power, to the concurrence of the Senate. The irresistible inference from these considerations is, that the mere nomination of a department, as one of the three great and commonly acknowledged departments of government, does not confer on that department any power at all. Notwithstanding the departments are called the legislative, the executive, and the judicial, we must yet look into the provisions of the Constitution itself, in order to learn, first, what powers the Constitution regards as legislative, executive, and judicial; and, in the next place, what portions or quantities of these powers are conferred on the respective departments; because no one will contend that *all* legislative power belongs to Congress, *all* executive power to the President, or *all* judicial power to the courts of the United States.

The first three articles of the Constitution, as all know, are taken up in prescribing the organization, and enumerating the powers, of the three departments. The first article treats of the legislature, and its first section is, "All legislative power, *herein granted*, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." The second article treats of the executive power, and its first section declares that "the executive power shall be vested in a President of the United States of America." The third article treats of the judicial power, and its first section declares that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish."

It is too plain to be doubted, I think, Sir, that these descriptions of the persons or officers in whom the executive and the judicial powers are to be vested no more define the extent of

the grant of those powers, than the words quoted from the first article describe the extent of the legislative grant to Congress. All these several titles, heads of articles, or introductory clauses, with the general declarations which they contain, serve to designate the departments, and to mark the general distribution of powers; but in all the departments, in the executive and judicial as well as in the legislative, it would be unsafe to contend for any specific power under such clauses.

If we look into the State constitutions, we shall find the line of distinction between the departments still less perfectly drawn, although the general principle of the distinction is laid down in most of them, and in some of them in very positive and emphatic terms. In some of these States, notwithstanding the principle of distribution is adopted and sanctioned, the legislature appoints the judges; and in others it appoints both the governor and the judges; and in others, again, it appoints not only the judges, but all other officers.

The inferences which, I think, follow from these views of the subject, are two: first, that the denomination of a department does not fix the limits of the powers conferred on it, nor even their exact nature; and, second (which, indeed, follows from the first), that, in our American governments, the chief executive magistrate does not necessarily, and by force of his general character of supreme executive, possess the appointing power. He may have it, or he may not, according to the particular provisions applicable to each case in the respective constitutions.

The President appears to have taken a different view of this subject. He seems to regard the appointing power as originally and inherently in the executive, and as remaining absolute in his hands, except so far as the Constitution restrains it. This I do not agree to, and I shall have occasion hereafter to examine the question further. I have intended thus far only to insist on the high and indispensable duty of maintaining the division of power *as the Constitution has marked out that division*, and to oppose claims of authority not founded on express grants or necessary implication, but sustained merely by argument or inference from names or denominations given to departments.

Mr. President, the resolutions now before us declare, that the Protest asserts powers as belonging to the President inconsistent with the authority of the two houses of Congress, and incon-

sistent with the Constitution; and that the Protest itself is a breach of privilege. I believe all this to be true.

The doctrines of the Protest are inconsistent with the authority of the two houses, because, in my judgment, they deny the just extent of the law-making power. I take the Protest as it was sent to us, without inquiring how far the subsequent message has modified or explained it. It is singular, indeed, that a paper, so long in preparation, so elaborate in composition, and which is put forth for so high a purpose as the Protest avows, should not be able to stand an hour's discussion before it became evident that it was indispensably necessary to alter or explain its contents. Explained or unexplained, however, the paper contains sentiments which justify us, as I think, in adopting these resolutions.

In the first place, I think the Protest a clear breach of privilege. It is a reproof or rebuke of the Senate, in language hardly respectful, for the exercise of a power clearly belonging to it as a legislative body. It entirely misrepresents the proceedings of the Senate. I find this paragraph in it, among others of a similar tone and character: — "A majority of the Senate, whose interference with the preliminary question has, for the best of all reasons, been studiously excluded, anticipate the action of the House of Representatives, assume not only the function which belongs exclusively to that body, but convert themselves into accusers, witnesses, counsel, and judges, and prejudge the whole case; thus presenting the appalling spectacle, in a free state, of judges going through a labored preparation for an impartial hearing and decision, by a previous *ex parte* investigation and sentence against the supposed offender."

Now, Sir, this paragraph, I am bound to say, is a total misrepresentation of the proceedings of the Senate. A majority of the Senate have not anticipated the House of Representatives; they have not assumed the functions of that body; they have not converted themselves into accusers, witnesses, counsel, or judges; they have made no *ex parte* investigation; they have given no sentence. This paragraph is an elaborate perversion of the whole design and the whole proceedings of the Senate. A Protest, sent to us by the President, against votes which the Senate has an unquestionable right to pass, and containing, too, such a misrepresentation of these votes as this paragraph manifests, is a breach of privilege.

But there is another breach of privilege. The President interferes between the members of the Senate and their constituents, and charges them with acting contrary to the will of those constituents. He says it is his right and duty to look to the journals of the Senate to ascertain who voted for the resolution of the 28th of March, and then to show that individual Senators have, by their votes on that resolution, disobeyed the instructions or violated the known will of the legislatures who appointed them. All this he claims as his right and his duty. And where does he find any such right or any such duty? What right has he to send a message to either house of Congress telling its members that they disobey the will of their constituents? Has any English sovereign since Cromwell's time dared to send such a message to Parliament? Sir, if he can tell us that some of us disobey our constituents, he can tell us that all do so; and if we consent to receive this language from him, there is but one remaining step, and that is, that, since we thus disobey the will of our constituents, he should disperse us and send us home. In my opinion, the first step in this process is as distinct a breach of privilege as the last. If Cromwell's example shall be followed out, it will not be more clear than it is now that the privileges of the Senate have been violated. There is yet something, Sir, which surpasses all this; and that is, that, after this direct interference, after pointing out those Senators whom he would represent as having disobeyed the known will of their constituents, *he disclaims all design of interfering at all!* Sir, who could be the writer of a message, which, in the first place, makes the President assert such monstrous pretensions, and, in the next line, affront the understanding of the Senate by disavowing all right to do that very thing which he is doing? If there be any thing, Sir, in this message, more likely than the rest of it to move one from his equanimity, it is this disclaimer of all design to interfere with the responsibility of members of the Senate to their constituents, after such interference had already been made, in the same paper, in the most objectionable and offensive form. If it were not for the purpose of telling these Senators that they disobeyed the will of the legislatures of the States they represent, *for what purpose was it* that the Protest has pointed out the four Senators, and paraded against them the sentiments of their legislatures? There can be no other purpose. The Protest says,

indeed, that "these facts belong to the history of these proceedings"! To the history of what proceedings? To any proceeding to which the President was party? To any proceeding to which the Senate was party? Have they any thing to do with the resolution of the 28th of March? But it adds, that these facts *are important to the just development of the principles and interests involved in the proceedings*. All this might be said of any other facts. It is mere words. To what principles, to what interests, are these facts important? They can be important but in one point of view; and that is as proof, or evidence, that the Senators have disobeyed instructions, or acted against the known will of their constituents in disapproving the President's conduct. They have not the slightest bearing in any other way. They do not make the resolution of the Senate more or less true, nor its right to pass it more or less clear. Sir, these proceedings of the legislatures were introduced into this Protest for the very purpose, and no other, of showing that members of the Senate have acted contrary to the will of their constituents. Every man sees and knows this to have been the sole design; and any other pretence is a mockery to our understandings. And this purpose is, in my opinion, an unlawful purpose; it is an unjustifiable intervention between us and our constituents; and is, therefore, a manifest and flagrant breach of privilege.

In the next place, the assertions of the Protest are inconsistent with the just authority of Congress, because they claim for the President a power, independent of Congress, to possess the custody and control of the public treasures. Let this point be accurately examined; and, in order to avoid mistake, I will read the precise words of the Protest.

"The custody of the public property, under such regulations as may be prescribed by legislative authority, has always been considered an appropriate function of the executive department in this and all other governments. In accordance with this principle, every species of property belonging to the United States, (excepting that which is in the use of the several coördinate departments of the government, as means to aid them in performing their appropriate functions,) is in charge of officers appointed by the President, whether it be lands, or buildings, or merchandise, or provisions, or clothing, or arms and munitions of war. The superintendents and keepers of the whole are appointed by the President, and removable at his will.

“Public money is but a species of public property. It cannot be raised by taxation or customs, nor brought into the treasury in any other way except by law ; but whenever or howsoever obtained, its custody always has been, and always must be, unless the Constitution be changed, intrusted to the executive department. No officer can be created by Congress, for the purpose of taking charge of it, whose appointment would not, by the Constitution, at once devolve on the President, and who would not be responsible to him for the faithful performance of his duties.”

And, in another place, it declares that “Congress cannot, therefore, take out of the hands of the executive department the custody of the public property or money, without an assumption of executive power, and a subversion of the first principles of the Constitution.” These, Sir, are propositions which cannot receive too much attention. They affirm, that the custody of the public money constitutionally and necessarily belongs to the executive ; and that, until the Constitution is changed, Congress cannot take it out of his hands, nor make any provision for its custody, except by such superintendents and keepers as are appointed by the President and removable at his will. If these assertions be correct, we have, indeed, a singular constitution for a republican government ; for we give the executive the control, the custody, and the possession of the public treasury, by original constitutional provision ; and when Congress appropriates, it appropriates only what is already in the President’s hands.

Sir, I hold these propositions to be sound in neither branch. I maintain that the custody of the public money does not necessarily belong to the executive, under this government ; and I hold that Congress may so dispose of it, that it shall be under the superintendence of keepers not appointed by the President, nor removable at his will. I think it competent for Congress to declare, as Congress did declare in the bank charter, that the public deposits should be made in the bank. When in the bank, they were not kept by persons appointed by the President, or removable at his will. He could not change that custody ; nor could it be changed at all, but according to provisions made in the law itself. There was, indeed, a provision in the law authorizing the *Secretary* to change the custody. But suppose there had been no such provision ; suppose the contingent power had not been given to the Secretary ; would it not

have been a lawful enactment? Might not the law have provided that the public moneys should remain in the bank, until Congress itself should otherwise order, leaving no power of removal anywhere else? And if such provision had been made, what power, or custody, or control, would the President have possessed over them? Clearly, none at all. The act of May, 1800, directed custom-house bonds, in places where the bank which was then in existence was situated, or in which it had branches, to be deposited in the bank or its branches for collection, without the reservation to the Secretary, or any body else, of any power of removal. Now, Sir, this was an unconstitutional law, if the Protest, in the part now under consideration, be correct; because it placed the public money in a custody beyond the control of the President, and in the hands of keepers not appointed by him, nor removable at his pleasure. One may readily discern, Sir, the process of reasoning by which the author of the Protest brought himself to the conclusion that Congress could not place the public moneys beyond the President's control. It is all founded on the power of appointment and the power of removal. These powers, it is supposed, must give the President complete control and authority over those who actually hold the money, and therefore must necessarily subject its custody, at all times, to his own individual will. This is the argument.

It is true, that the appointment of all public officers, with some exceptions, is, by the Constitution, given to the President, with the consent of the Senate; and as, in most cases, public property must be held by some officer, its keepers will generally be persons so appointed. But this is only the common, not a necessary consequence, of giving the appointing power to the President and Senate. Congress may still, if it shall so see fit, place the public treasure in the hand of no officer appointed by the President, or removable by him, but in hands quite beyond his control. Subject to one contingency only, it did this very thing by the charter of the present bank; and it did the same thing absolutely, and subject to no contingency, by the law of 1800. The Protest, in the first place, seizes on the fact that all officers must be appointed by the President, or on his nomination; it then assumes the next step, that all officers are, and *must be*, removable at his pleasure; and then, insisting that

public money, like other public property, must be kept by *some public officer*, it thus arrives at the conclusion that it *must* always be in the hands of those who are appointed by the President, and who are removable at his pleasure. And it is very clear that the Protest means to maintain that the *tenure of office cannot be so regulated by law, as that public officers shall not be removable at the pleasure of the President.*

The President considers the right of removal as a fixed, vested, constitutional right, which Congress cannot limit, control, or qualify, until the Constitution shall be altered. This, Sir, is doctrine which I am not prepared to admit. I shall not now discuss the question, whether the law may not place the tenure of office beyond the reach of executive pleasure; but I wish merely to draw the attention of the Senate to the fact, that any such power in Congress is denied by the principles and by the words of the Protest. According to that paper, we live under a constitution by the provisions of which the public treasures are, necessarily and unavoidably, always under executive control; and as the executive may remove all officers, and appoint others, at least temporarily, without the concurrence of the Senate, he may hold those treasures, in the hands of persons appointed by himself alone, in defiance of any law which Congress has passed or can pass. It is to be seen, Sir, how far such claims of power will receive the approbation of the country. It is to be seen whether a construction will be readily adopted which thus places the public purse out of the guardianship of the immediate representatives of the people.

But, Sir, there is, in this paper, something even yet more strange than these extraordinary claims of power. There is a strong disposition, running through the whole Protest, to represent the executive department of this government as the peculiar protector of the public liberty, the chief security on which the people are to rely against the encroachment of other branches of the government. Nothing can be more manifest than this purpose. To this end, the Protest spreads out the President's official oath, reciting all its words in a formal quotation; and yet the oath of members of Congress is exactly equivalent. The President is to swear that he will "preserve, protect, and defend the Constitution"; and members of Congress are to swear that they will "support the Constitution." There are

more words in one oath than the other, but the sense is precisely the same. Why, then, this reference to his official oath, and this ostentatious quotation of it? Would the writer of the Protest argue that the oath itself is any grant of power; or that, because the President is to "preserve, protect, and defend the Constitution," he is, therefore, to use what means he pleases for such preservation, protection, and defence, or any means except those which the Constitution and laws have specifically given him? Such an argument would be absurd; but if the oath be not cited for this preposterous purpose, with what design is it thus displayed on the face of the Protest, unless it be to support the general idea that the maintenance of the Constitution and the preservation of the public liberties are especially confided to the safe discretion, the sure moderation, the paternal guardianship, of executive power? The oath of the President contains three words, all of equal import; that is, that he will *preserve, protect, and defend* the Constitution. The oath of members of Congress is expressed in shorter phrase; it is, that they will *support* the Constitution. If there be any difference in the meaning of the two oaths, I cannot discern it; and yet the Protest solemnly and formally argues thus: "The duty of defending, so far as in him lies, the integrity of the Constitution, would, indeed, have resulted from the very nature of his office; but by thus expressing it in the official oath or affirmation, which, in this respect, differs from that of every other functionary, the founders of our republic have attested their sense of its importance, and have given to it a peculiar solemnity and force."

Sir, I deny the proposition, and I dispute the proof. I deny that the duty of defending the integrity of the Constitution is, in any peculiar sense, confided to the President; and I deny that the words of his oath furnish any argument to make good that proposition. Be pleased, Sir, to remember *against whom it is* that the President holds it *his* peculiar duty to defend the integrity of the Constitution. It is not against external force; it is not against a foreign foe; no such thing; *but it is against the representatives of the people and the representatives of the States!* It is against these that the founders of our republic have imposed on him the duty of defending the integrity of the Constitution; a duty he says, of the importance of which they

have attested their sense, and to which they have given peculiar solemnity and force, by expressing it in his official oath!

Let us pause, Sir, and consider this most strange proposition. The President is the chief executive magistrate. He is commander-in-chief of the army and navy; nominates all persons to office; claims a right to remove all at will, and to control all, while yet in office; dispenses all favors; and wields the whole patronage of the government. And the proposition is, that the duty of defending the integrity of the Constitution against the representatives of the States, and against the representatives of the people, *results to him from the very nature of his office*; and that the founders of our republic have given to this duty, thus confided to him, peculiar solemnity and force!

Mr. President, the contest, for ages, has been to rescue Liberty from the grasp of executive power. Whoever has engaged in her sacred cause, from the days of the downfall of those great aristocracies which had stood between the king and the people to the time of our own independence, has struggled for the accomplishment of that single object. On the long list of the champions of human freedom, there is not one name dimmed by the reproach of advocating the extension of executive authority; on the contrary, the uniform and steady purpose of all such champions has been to limit and restrain it. To this end the spirit of liberty, growing more and more enlightened and more and more vigorous from age to age, has been battering, for centuries, against the solid buttments of the feudal system. To this end, all that could be gained from the imprudence, snatched from the weakness, or wrung from the necessities of crowned heads, has been carefully gathered up, secured, and hoarded, as the rich treasures, the very jewels of liberty. To this end, popular and representative right has kept up its warfare against prerogative, with various success; sometimes writing the history of a whole age in blood, sometimes witnessing the martyrdom of Sidneys and Russells, often baffled and repulsed, but still gaining, on the whole, and holding what it gained with a grasp which nothing but the complete extinction of its own being could compel it to relinquish. At length, the great conquest over executive power, in the leading western states of Europe, has been accomplished. The feudal system, like other stupendous fabrics of past ages, is known only by the rubbish which it has left be-

hind it. Crowned heads have been compelled to submit to the restraints of law, and the PEOPLE, with that intelligence and that spirit which make their voice resistless, have been able to say to prerogative, "Thus far shalt thou come, and no farther." I need hardly say, Sir, that into the full enjoyment of all which Europe has reached only through such slow and painful steps we sprang at once, by the Declaration of Independence, and by the establishment of free representative governments; governments borrowing more or less from the models of other free states, but strengthened, secured, improved in their symmetry, and deepened in their foundation, by those great men of our own country whose names will be as familiar to future times as if they were written on the arch of the sky.

Through all this history of the contest for liberty, executive power has been regarded as a lion which must be caged. So far from being the object of enlightened popular trust, so far from being considered the natural protector of popular right, it has been dreaded, uniformly, always dreaded, as the great source of its danger.

And now, Sir, who is he, so ignorant of the history of liberty, at home and abroad; who is he, yet dwelling in his contemplations among the principles and dogmas of the Middle Ages; who is he, from whose bosom all original infusion of American spirit has become so entirely evaporated and exhaled, that he shall put into the mouth of the President of the United States the doctrine that the defence of liberty *naturally results to* executive power, and is its peculiar duty? Who is he, that, generous and confiding towards power where it is most dangerous, and jealous only of those who can restrain it; who is he, that, reversing the order of the state, and upheaving the base, would poise the pyramid of the political system upon its apex? Who is he, that, overlooking with contempt the guardianship of the representatives of the people, and with equal contempt the higher guardianship of the people themselves; — who is he that declares to us, through the President's lips, that the security for freedom rests in executive authority? Who is he that belies the blood and libels the fame of his own ancestors, by declaring that *they*, with solemnity of form, and force of manner, have invoked the executive power to come to the protection of liberty? Who is he that thus charges them with the

insanity, or the recklessness, of putting the lamb beneath the lion's paw? No, Sir. No, Sir. Our security is in our watchfulness of executive power. It was the constitution of this department which was infinitely the most difficult part in the great work of creating our present government. To give to the executive department such power as should make it useful, and yet not such as should render it dangerous; to make it efficient, independent, and strong, and yet to prevent it from sweeping away every thing by its union of military and civil authority, by the influence of patronage, and office, and favor,—this, indeed, was difficult. They who had the work to do saw the difficulty, and we see it; and if we would maintain our system, we shall act wisely to that end, by preserving every restraint and every guard which the Constitution has provided. And when we, and those who come after us, have done all that we can do, and all that they can do, it will be well for us and for them, if some popular executive, by the power of patronage and party, and the power, too, of that very popularity, shall not hereafter prove an overmatch for all other branches of the government.

I do not wish, Sir, to impair the power of the President, as it stands written down in the Constitution, and as great and good men have hitherto exercised it. In this, as in other respects, I am for the Constitution as it is. But I will not acquiesce in the reversal of all just ideas of government; I will not degrade the character of popular representation; I will not blindly confide, where all experience admonishes me to be jealous; I will not trust executive power, vested in the hands of a single magistrate, to be the guardian of liberty.

Having claimed for the executive the especial guardianship of the Constitution, the Protest proceeds to present a summary view of the powers which are supposed to be conferred on the executive by that instrument. And it is to this part of the message, Sir, that I would, more than to all others, call the particular attention of the Senate. I confess that it was only upon careful reperusal of the paper that I perceived the extent to which its assertions of power reach. I do not speak now of the President's claims of power as opposed to legislative authority, but of his opinions as to his own authority, duty, and responsibility, as connected with all other officers under the government. He

is of opinion that the whole executive power is vested in him, and that he is responsible for its entire exercise; that among the duties imposed on him is that of "taking care that the laws be faithfully executed"; and that, "being thus made responsible for the entire action of the executive department, it is but reasonable that the power of appointing, overseeing, and controlling those who execute the laws, a power in its nature executive, should remain in his hands. It is, therefore, not only his right, but the Constitution makes it his duty, to 'nominate, and, by and with the advice and consent of the Senate, appoint,' all 'officers of the United States whose appointments are not in the Constitution otherwise provided for,' with a proviso that the appointment of inferior officers may be vested in the President alone, in the courts of justice, or in the heads of departments."

The first proposition, then, which the Protest asserts, in regard to the President's powers as executive magistrate, is, that, the general duty being imposed on him by the Constitution, of taking care that the laws be faithfully executed, *he thereby becomes himself responsible for the conduct of every person employed in the government*; "for the entire action," as the paper expresses it, "of the executive department." This, Sir, is very dangerous logic. I reject the inference altogether. No such responsibility, nor any thing like it, follows from the general provision of the Constitution, making it his duty to see the laws executed. If it did, we should have, in fact, but one officer in the whole government. The President would be every body. And the Protest assumes to the President this whole responsibility for every other officer, for the very purpose of making the President every body, of annihilating every thing like independence, responsibility, or *character*, in all other public agents. The whole responsibility is assumed, in order that it may be more plausibly argued that all officers of government are, not agents of the law, but the President's agents, and therefore responsible to him alone. If he be responsible for the conduct of all officers, and they be responsible to him only, then it may be maintained that such officers are but his own agents, his substitutes, his deputies. The first thing to be done, therefore, is to assume the responsibility for all; and this, you will perceive, Sir, is done, in the fullest manner, in the passages which I have

read. Having thus assumed for the President the entire responsibility of the whole government, the Protest advances boldly to its conclusion, and claims, at once, absolute power over all individuals in office, as being merely the President's agents. This is the language: "The whole executive power being vested in the President, who is responsible for its exercise, it is a necessary consequence that he should have a right to employ agents of his own choice to aid him in the performance of his duties, and to discharge them when he is no longer willing to be responsible for their acts."

This, Sir, completes the work. This handsomely rounds off the whole executive system of executive authority. First, the President has the whole responsibility; and then, being thus responsible for all, he has, and ought to have, the whole power. We have heard of political *units*, and our American executive, as here represented, is indeed a *unit*. We have a charmingly simple government! Instead of many officers, in different departments, each having appropriate duties and each responsible for his own duties, we are so fortunate as to have to deal with but one officer. The President carries on the government; all the rest are but sub-contractors. Sir, whatever *name* we give him, we have but ONE EXECUTIVE OFFICER. A Briareus sits in the centre of our system, and with his hundred hands touches every thing, moves every thing, controls every thing. I ask, Sir, Is this republicanism? Is this a government of laws? Is this legal responsibility?

According to the Protest, the very duties which every officer under the government performs are the duties of the President himself. It says that the President has a right to employ *agents* of his *own choice*, to aid HIM in the performance of HIS duties.

Mr. President, if these doctrines be true, it is idle for us any longer to talk about any such thing as a government of laws. We have no government of laws, not even the semblance or shadow of it; we have no legal responsibility. We have an executive, consisting of one person, wielding all official power, and which is, to every effectual purpose, completely *irresponsible*. The President declares that he is "responsible for the entire action of the executive department." Responsible? What does he mean by being "responsible"? Does he mean legal responsibility? Certainly not. No such thing. Legal responsibility

signifies liability to punishment for misconduct or maladministration. But the Protest does not mean that the President is liable to be impeached and punished if a secretary of state should commit treason, if a collector of the customs should be guilty of bribery, or if a treasurer should embezzle the public money. It does not mean, and cannot mean, that he should be answerable for any such crime or such delinquency. What, then, is its notion of that *responsibility* which it says the President is under for all officers, and which authorizes him to consider all officers as his own personal agents? Sir, it is merely responsibility to public opinion. It is a liability to be blamed; it is the chance of becoming unpopular, the danger of losing a reëlection. Nothing else is meant in the world. It is the hazard of failing in any attempt or enterprise of ambition. This is all the responsibility to which the doctrines of the Protest hold the President subject.

It is precisely the *responsibility* under which Cromwell acted when he dispersed Parliament, telling its members, not in so many words, indeed, that they disobeyed the will of their constituents, but telling them that the people were sick of them, and that he drove them out "for the glory of God and the good of the nation." It is precisely the responsibility upon which Bonaparte broke up the popular assembly of France. I do not mean, Sir, certainly, by these illustrations, to insinuate designs of violent usurpation against the President; far from it; but I do mean to maintain, that such responsibility as that with which the Protest clothes him is no legal responsibility, no constitutional responsibility, no republican responsibility, but a mere liability to loss of office, loss of character, and loss of fame, if he shall choose to violate the laws and overturn the liberties of the country. It is such a responsibility as leaves every thing in his discretion and his pleasure.

Sir, it exceeds human belief that any man should put sentiments such as this paper contains into a public communication from the President to the Senate. They are sentiments which give us all one master. The Protest asserts an absolute right to remove all persons from office at pleasure; and for what reason? Because they are incompetent? Because they are incapable? Because they are remiss, negligent, or inattentive? No, Sir; these are not the reasons. But he may discharge

them, one and all, simply because "he is no longer willing to be responsible for their acts"! It insists on an absolute right in the President to *direct and control* every act of every officer of the government, except the judges. It asserts this right of direct *control* over and over again. The President may go into the treasury, among the auditors and comptrollers, and *direct* them how to settle every man's account; what abatements to make from one, what additions to another. He may go into the custom-house, among collectors and appraisers, and may *control* estimates, reductions, and appraisements. It is true that these officers are sworn to discharge the duties of their respective offices honestly and fairly, according to their *own* best abilities; it is true, that many of them are liable to indictment for official misconduct, and others responsible, in suits of individuals, for damages and penalties, if such official misconduct be proved; but notwithstanding all this, the Protest avers that all these officers are but the *President's agents*; that they are but aiding *him* in the discharge of *his* duties; that *he* is responsible for their conduct, and that they are removable at his will and pleasure. And it is under this view of his own authority that the President calls the Secretaries *his* Secretaries, not once only, but repeatedly. After half a century's administration of this government, Sir;—after we have endeavored, by statute upon statute, and by provision following provision, to define and limit official authority; to assign particular duties to particular public servants; to define those duties; to create penalties for their violation; to adjust accurately the responsibility of each agent with his own powers and his own duties; to establish the prevalence of equal rule; to make the law, as far as possible, every thing, and individual will, as far as possible, nothing;—after all this, the astounding assertion rings in our ears, that, throughout the whole range of official agency, in its smallest ramifications as well as in its larger masses, there is but ONE RESPONSIBILITY, ONE DISCRETION, ONE WILL! True indeed is it, Sir, if these sentiments be maintained,—true indeed is it that a President of the United States may well repeat from Napoleon what he repeated from Louis the Fourteenth, "I am the state!"

The argument by which the writer of the Protest endeavors to establish the President's claim to this vast mass of accumulated authority, is founded on the provision of the Constitution,

that the executive power shall be vested in the President. No doubt the executive power is vested in the President; but what and how much executive power, and how limited? To this question I should answer, "Look to the Constitution, and see; examine the particulars of the grant, and learn what that executive power is which is given to the President, either by express words or by necessary implication." But so the writer of this Protest does not reason. He takes these words of the Constitution as being, of themselves, a general original grant of all executive power to the President, subject only to such express limitations as the Constitution prescribes. This is clearly the writer's view of the subject, unless, indeed, he goes behind the Constitution altogether, as some expressions would intimate, to search elsewhere for sources of executive power. Thus, the Protest says that it is not only the *right* of the President, but that the Constitution makes it his *duty*, to appoint persons to office; as if the *right* existed before the Constitution had created the *duty*. It speaks, too, of the power of removal, not as a power *granted* by the Constitution, but expressly as "an original executive power, *left* unchecked by the Constitution." How original? Coming from what source higher than the Constitution? I should be glad to know how the President gets possession of any power by a title earlier, or more *original*, than the grant of the Constitution; or what is meant by an *original* power, which the President possesses, and which the Constitution has *left* unchecked in his hands. The truth is, Sir, most assuredly, that the writer of the Protest, in these passages, was reasoning upon the British constitution, and not upon the Constitution of the United States. Indeed, he professes to found himself on authority drawn from the constitution of England. I will read, Sir, the whole passage. It is this: —

"In strict accordance with this principle, the power of removal, which, like that of appointment, is an original executive power, is left unchecked by the Constitution in relation to all executive officers, for whose conduct the President is responsible; while it is taken from him in relation to judicial officers, for whose acts he is not responsible. *In the government from which many of the fundamental principles of our system are derived, the head of the executive department originally had power to appoint and remove at will all officers, executive and judicial.* It was to take the judges out of this general power of removal, and thus

make them independent of the executive, that the tenure of their offices was changed to good behavior. Nor is it conceivable why they are placed, in our Constitution, upon a tenure different from that of all other officers appointed by the executive, unless it be for the same purpose."

Mr. President, I do most solemnly protest (if I, too, may be permitted to make a protest) against this mode of reasoning. The analogy between the British constitution and ours, in this respect, is not close enough to guide us safely; it can only mislead us. It has entirely misled the writer of the Protest. The President is made to argue, upon this subject, as if he had some right *anterior* to the Constitution, which right is by that instrument checked, in some respects, and in other respects is left unchecked, but which, nevertheless, still derives its being from another source; just as the British king had, in the early ages of the monarchy, an uncontrolled right of appointing and removing all officers at pleasure, but which right, so far as it respects the judges, has since been checked and controlled by act of Parliament; the right being original and inherent, the *check* only imposed by law. Sir, I distrust altogether British precedents, authorities, and analogies, on such questions as this. We are not inquiring how far our Constitution has imposed checks on a preëxisting authority. We are inquiring what extent of power that Constitution has *granted*. The grant of power, the whole source of power, as well as the restrictions and limitations which are imposed on it, is made in and by the Constitution. It has no other origin. And it is this, Sir, which distinguishes our system so very widely and materially from the systems of Europe. *Our* governments are limited governments; limited in their origin, in their very creation; limited, because none but specific powers were ever granted, either to any department of government, or to the whole: *theirs* are limited, whenever limited at all, by reason of restraints imposed at different times on governments originally unlimited and despotic. Our American questions, therefore, must be discussed, reasoned on, decided, and settled, on the appropriate principles of our own constitutions, and not by inapplicable precedents and loose analogies drawn from foreign states.

Mr. President, in one of the French comedies, as you know, in which the dulness and prolixity of legal argument is intended to be severely satirized, while the advocate is tediously groping

among ancient lore having nothing to do with his case, the judge grows impatient, and at last cries out to him to *come down to the flood!* I really wish, Sir, that the writer of this Protest, since he was discussing matters of the highest importance to us as Americans, and which arise out of our own peculiar Constitution, had kept himself, not only on this side the general deluge, but also on this side the Atlantic. I desire that the broad waves of that wide sea should continue to roll between us and the influence of those foreign principles and foreign precedents which he so eagerly adopts.

In asserting power for an American President, I prefer that he should attempt to maintain his assertions on American reasons. I know not, Sir, who the writer was (I wish I did); but whoever he was, it is manifest that he argues this part of his case, throughout, on the principles of the constitution of England. It is true, that, in England, the king is regarded as the original fountain of all honor and all office; and that anciently, indeed, he possessed all political power of every kind. It is true that this mass of authority, in the progress of that government, has been diminished, restrained, and controlled, by charters, by immunities, by grants, and by various modifications, which the friends of liberty have, at different periods, been able to obtain or to impose. All liberty, as we know, all popular privileges, as indeed the word itself imports, were formerly considered as favors and concessions from the monarch. But whenever and wherever civil freedom could get a foothold, and could maintain itself, these favors were turned into rights. Before and during the reigns of the princes of the Stuart family, they were acknowledged only as favors or privileges graciously allowed, although even then, whenever opportunity offered, as in the instance to which I alluded just now, they were contended for as rights; and by the Revolution of 1688 they were acknowledged as the rights of Englishmen, by the prince who then ascended the throne, and as the condition on which he was allowed to sit upon it. But with us there never was a time when we acknowledged original, unrestrained, sovereign power over us. Our constitutions are not made to limit and restrain preëxisting authority. They are the instruments by which the people confer power on their own servants. If I may use a legal phrase, the people are grantors, not grantees. They give to the govern-

ment, and to each branch of it, all the power it possesses, or can possess; and what is not given they retain. In England, before her revolution, and in the rest of Europe since, if we would know the extent of liberty or popular right, we must go to grants, to charters, to allowances, and indulgences. But with us, we go to grants and to constitutions to learn the extent of the powers of government. No political power is more original than the Constitution; none is possessed which is not there granted; and the grant, and the limitations in the grant, are in the same instrument.

The powers, therefore, belonging to any branch of our government, are to be construed and settled, not by remote analogies drawn from other governments, but from the words of the grant itself, in their plain sense and necessary import, and according to an interpretation consistent with our own history and the spirit of our own institutions. I will never agree that a President of the United States holds the whole undivided power of office in his own hands, upon the theory that he is responsible for the entire action of the whole body of those engaged in carrying on the government and executing the laws. Such a responsibility is purely ideal, delusive, and vain. There is, there can be, no substantial responsibility, any further than every individual is answerable, not merely in his reputation, not merely in the opinion of mankind, but *to the law*, for the faithful discharge of his own appropriate duties. Again and again we hear it said that the President is responsible to the American people! that he is responsible to the bar of public opinion! For whatever he does, he assumes accountability to the American people! For whatever he omits, he expects to be brought to the high bar of public opinion! And this is thought enough for a limited, restrained, republican government! an undefined, undefinable, ideal responsibility to the public judgment!

Sir, if all this mean any thing, if it be not empty sound, it means no less than that the President may do any thing and every thing which he may expect to be tolerated in doing. He may go just so far as he thinks it safe to go; and Cromwell and Bonaparte went no farther. I ask again, Sir, Is this legal responsibility? Is this the true nature of a government with written laws and limited powers? And allow me, Sir, to ask, too, if an executive magistrate, while professing to act under the

Constitution, is restrained only by this responsibility to public opinion, what prevents him, on the same responsibility, from proposing a change in that Constitution? Why may he not say, "I am about to introduce new forms, new principles, and a new spirit; I am about to try a political experiment on a great scale; and when I get through with it, I shall be responsible to the American people, I shall be answerable to the bar of public opinion"?

Connected, Sir, with the idea of this airy and unreal responsibility to the public is another sentiment, which of late we hear frequently expressed; and that is, *that the President is the direct representative of the American people*. This is declared in the Protest in so many words. "The President," it says, "*is the direct representative of the American people*." Now, Sir, this is not the language of the Constitution. The Constitution nowhere calls him the representative of the American people; still less, their direct representative. It could not do so with the least propriety. He is not chosen directly by the people, but by a body of electors, some of whom are chosen by the people, and some of whom are appointed by the State legislatures. Where, then, is the authority for saying that the President is the *direct representative of the people*? The Constitution calls the members of the other house Representatives, and declares that they shall be chosen by the people; and there are no other direct or immediate representatives of the people in this government. The Constitution denominates the President simply the President of the United States; it points out the complex mode of electing him, defines his powers and duties, and imposes limits and restraints on his authority. With these powers and duties, and under these restraints, he becomes, when chosen, President of the United States. That is his character, and the denomination of his office. How is it, then, that, on this official character, thus cautiously created, limited, and defined, he is to engraft another and a very imposing character, namely, the character of *the direct representative of the American people*? I hold this, Sir, to be mere assumption, and dangerous assumption. If he is the representative of *all* the American people, he is the only representative which they all have. Nobody else presumes to represent all the people. And if he may be allowed to consider himself as the **SOLE REPRESENTATIVE OF ALL THE AMERICAN**

PEOPLE, and is to act under no other responsibility than such as I have already described, then I say, Sir, that the government (I will not say the people) has already a master. I deny the sentiment, therefore, and I protest against the language; neither the sentiment nor the language is to be found in the Constitution of the country; and whoever is not satisfied to describe the powers of the President in the language of the Constitution may be justly suspected of being as little satisfied with the powers themselves. The President is President. His office and his name of office are known, and both are fixed and described by law. Being commander of the army and navy, holding the power of nominating to office and removing from office, and being by these powers the fountain of all patronage and all favor, what does he not become if he be allowed to superadd to all this the character of single representative of the American people? Sir, he becomes what America has not been accustomed to see, what this Constitution has never created, and what I cannot contemplate but with profound alarm. He who may call himself the single representative of a nation, may speak in the name of the nation, may undertake to wield the power of the nation; and who shall gainsay him in whatsoever he chooses to pronounce to be the nation's will?

I will now, Sir, ask leave to recapitulate the general doctrines of this Protest, and to present them together. They are, —

That neither branch of the legislature can take up, or consider, for the purpose of censure, any official act of the President, without some view to legislation or impeachment;

That not only the passage, but the discussion, of the resolution of the Senate of the 28th of March, was unauthorized by the Constitution, and repugnant to its provisions;

That the custody of the public treasury always must be intrusted to the executive; that Congress cannot take it out of his hands, nor place it anywhere except under such superintendents and keepers as are appointed by him, responsible to him, and removable at his will;

That the whole executive power is in the President, and that therefore the duty of defending the integrity of the Constitution *results to him from the very nature of his office*; and that the founders of our republic have attested their sense of the im-

portance of this duty, and, by expressing it in his official oath, have given to it peculiar solemnity and force;

That, as he is to take care that the laws be faithfully executed, he is thereby made responsible for the entire action of the executive department, with the power of appointing, overseeing, and *controlling* those who execute the laws;

That the power of removal from office, like that of appointment, is an *original* executive power, and is *left* in his hands *unchecked* by the Constitution, except in the case of judges; that, being responsible for the exercise of the whole executive power, he has a right to employ agents of his own choice to assist *him* in the performance of *his* duties, and to discharge them when he is no longer willing to be responsible for their acts;

That the Secretaries are *his* Secretaries, and all persons appointed to offices created by law, except the judges, *his* agents, responsible to him, and removable at his pleasure;

And, finally, that he is the *direct representative of the American people*.

These, Sir, are some of the leading propositions contained in the Protest; and if they be true, then the government under which we live is an elective monarchy. It is not yet absolute; there are yet some checks and limitations in the Constitution and laws; but, in its essential and prevailing character, it is an elective monarchy.

Mr. President, I have spoken freely of this Protest, and of the doctrines which it advances; but I have spoken deliberately. On these high questions of constitutional law, respect for my own character, as well as a solemn and profound sense of duty, restrains me from giving utterance to a single sentiment which does not flow from entire conviction. I feel that I am not wrong. I feel that an inborn and inbred love of constitutional liberty, and some study of our political institutions, have not on this occasion misled me. But I have desired to say nothing that should give pain to the chief magistrate personally. I have not sought to fix arrows in his breast; but I believe him mistaken, altogether mistaken, in the sentiments which he has expressed; and I must concur with others in placing on the records of the Senate my disapprobation of those sentiments. On a vote which is to remain so long as any proceeding of the

Senate shall last, and on a question which can never cease to be important while the Constitution of the country endures, I have desired to make public my reasons. They will now be known, and I submit them to the judgment of the present and of after times. Sir, the occasion is full of interest. It cannot pass off without leaving strong impressions on the character of public men. A collision has taken place which I could have most anxiously wished to avoid; but it was not to be shunned. We have not sought this controversy; it has met us, and been forced upon us. In my judgment, the law has been disregarded, and the Constitution transgressed; the fortress of liberty has been assaulted, and circumstances have placed the Senate in the breach; and, although we may perish in it, I know we shall not fly from it. But I am fearless of consequences. We shall hold on, Sir, and hold out, till the people themselves come to its defence. We shall raise the alarm, and maintain the post, till they whose right it is shall decide whether the Senate be a faction, wantonly resisting lawful power, or whether it be opposing, with firmness and patriotism, violations of liberty and inroads upon the Constitution.

The Post-Office*

IN the Senate, June 27th, 1834, the report of the Committee on the condition of the General Post-Office, and the resolutions with which the report concludes, having been taken up and debated by several gentlemen, Mr. Webster, in conclusion, made the following remarks:—

MR. PRESIDENT,—Great credit is due to the committee for the labor, diligence, and ability which its members have bestowed on the subject referred to them. They have now made a report of a very serious character, containing explicit charges of maladministration, and accompanied by the evidence on which those charges are founded. Two members of the committee have made a report, or presented a paper, of their own, in which they undertake in some instances to defend, and in others to excuse, the conduct of the Postmaster-General, and other persons employed in the department. Now, Sir, in an affair so complicated, where there are so many charges and so much evidence, the first question to be asked is, Are any of these charges admitted to be true by the friends of the administration, and, if any, which? And, as to the rest of the charges, are they all denied or contradicted, or are some of them, and, if any, which, left without denial or contradiction? The honorable chairman of the committee,† who does not agree in the report of the committee, but who is one of the two members who signed the other paper, called the report of the minority, has addressed the Senate repeatedly on the subject of these charges. Some of them he has objected to; others he has not attempted to rebut; and of others he has said nothing. The

* Remarks made in the Senate of the United States, on the Affairs of the General Post-Office, on the 27th of June, 1834.

† Mr. Grundy.

honorable gentleman is friendly to the administration, and to the head of the Post-Office Department; and it was, therefore, hardly to be expected that he should show great zeal in the prosecution of this inquiry. Yet I think, Sir, we had a right to expect from him, not only his opinion on all the charges, but also some degree of patriotic indignation against lawless acts, which he admits to be lawless. Take, for example, the first resolution of the committee, which declares that the Postmaster-General has borrowed money on the credit of the United States, without any authority of law. The honorable chairman says he admits the truth of this charge. Admits it? But why does he content himself with admitting it? Does he not regard it as a gross violation of duty? Does he not think it an alarming thing, that the Postmaster-General should borrow half a million of dollars in order to cover up the deficiencies of the department, and that he should keep this loan concealed for years from the knowledge of Congress? As the head of a committee charged to inquire into abuses, and this enormous abuse having been discovered, can the honorable member justify himself by simply saying he admits its existence? Has he no reproof, no word of censure, for such a flagrant violation of law? Has he no disapprobation to express, no complaint to enter, in such tones that the administration shall hear them? No man denies the fact, and none undertakes to defend it. What then? Is the department still to go on in its career, and nothing to be done, any more than if nothing had been discovered? If there were nothing else in the whole report, if that charge stood alone, I cannot conceive how any man can doubt that the department ought to be immediately and thoroughly reformed. The country, if I mistake not, will call for such reformation. As to upholding the administration of the department, with such charges against it proved and admitted, it is more even than the spirit of party devotion can accomplish.

Again, Sir, the third resolution distinctly declares that a practice prevails in the post-office of granting contracts on bids, which vary from the advertisements, and of altering contracts after they are made and accepted; a practice which destroys all competition, and enables the department to give all contracts to favorites. Is this charge denied or admitted? I have not heard the honorable member, the chairman, deny it. Does

he acknowledge it to be true? If he does, why does he not tell us, in a plain and direct manner, that this too is an enormous abuse, and ought to be reformed? Is such a practice to pass without reprehension? While its existence is detected, discovered, and acknowledged, is there to be no rebuke of it?

Then there is the sixth resolution, which declares that extra allowances have been made to contractors, which are unreasonable and extravagant, and out of all proportion with the increase of service. Is this true?

The eleventh resolution alleges, in general terms, that the department is deeply in debt, and its affairs in disorder. I have heard no man deny this. None can deny it. The department is deeply in debt; its affairs are disordered, greatly disordered. These extra allowances appear to have lost their original character. Instead of being extraordinary, they have become ordinary. Contractors calculate upon them. The probability of an extra allowance enters into their motives when they make bids. Indeed, it seems of very little importance what bids they make. They are, in fact, paid just what sums the Postmaster-General sees fit to pay; and they are generally very well satisfied. From the frequency and the amount of these extras, and the constant changing of contracts, it is quite evident that all fair competition among contractors is done away.

Mr. President, the country is awakened to these abuses in the post-office, and it will not be, and ought not to be, satisfied without a thorough examination, and an honest and real reform. I give my hearty thanks to the committee for their zeal and industry. They have had a laborious winter, and are likely to have a laborious summer. Let them go on fearlessly, and the country will appreciate their services.

Let them explore all the sources of corrupt patronage; let them bring all abuses into the broad light of day. Let them inquire into the number of removals of postmasters, with the alleged causes of such removals. Let them inquire at whose bidding honest and faithful men have been removed, to make way for partisans. Let them ascertain whether it be true that persons here may go into the post-office, and require the removal of postmasters by dozens; and whether the Postmaster-General, as a matter of course, complies with such requisitions.

Mr. President, it is due to the committee, it is due to the Sen-

ate itself, it is due to this highly important subject, that we should express an opinion on some of the leading resolutions reported by the committee. If some are more doubtful than the rest, or require further examination, let them remain for further consideration. But on the plain, acknowledged, notorious cases, let us come to a vote. Let us show the country that we are in earnest. Let us begin with the first, with that which respects the borrowing of money from banks, without authority of law, or even the knowledge of Congress; and let us see whether any one individual member of the Senate is prepared to withhold from that proceeding his vote of censure.

Mr. Benton thought the Senate ought to defer, for the present, taking a vote on the resolutions. He said he had had no opportunity of carefully examining the reports, and therefore knew but little of their contents. However, he must say that he had found things in them at which he felt much mortified. Mr. Webster continued : —

I think, Sir, the best course, that which is called for by the importance of the subject, and which is due as well to the committee as the Senate, is this, — to take a vote on the first resolution. I will then move to lay the others upon the table, until such time as gentlemen shall have had an opportunity of examining them, when I will move that they be taken up.

The question was then taken on agreeing to the first resolution reported by the Post-Office Committee, in the following words : —

“ *Resolved*, That it is proved, and admitted, that large sums of money have been borrowed at different banks by the Postmaster-General, in order to make up the deficiency in the means of carrying on the business of the Post-Office Department, without authority given by any law of Congress; and that, as Congress alone possesses the power to borrow money on the credit of the United States, all such contracts for loans by the Postmaster-General are illegal and void.”

And the question on agreeing to this resolution was decided unanimously in the affirmative.

French Spoliations Prior to 1800^{*}

MR. PRESIDENT,—Before proceeding to the discussion of the bill, I feel it to be my duty to take notice of an occurrence such as does not ordinarily draw from me any remarks in my place in the Senate. Some time in March last, there appeared in a newspaper published at Albany, in the State of New York, a letter, purporting to have been written to the editor from Washington, in which the writer charges me with having a direct personal interest in these claims. I am ashamed to say, that this letter was written by a member of Congress. The assertion, like many others which I have not felt it to be my duty to take any notice of, was wholly and entirely false and malicious. I have not the slightest interest in these claims, or any one of them. I have never been conferred with or retained by any one, or spoken to as counsel, for any of them, in the course of my life. No member of the Senate is more entirely free from any personal connection with the claims than I am. It has been the pleasure of the Senate, on several occasions, to place me on a committee to which these petitions have been referred. I have on those occasions examined the subject with a desire to acquit myself conscientiously of my duty, by exercising my best judgment upon the claims, as questions of mere right and justice.

At the last session, an honorable member of the Senate, now in a public capacity at St. Petersburg,† introduced a bill for the relief of the petitioners, and moved the appointment of a com-

^{*} A Speech delivered in the Senate on the 12th of January, 1835, on the Bill granting Indemnity to Citizens of the United States for French Spoliations on American Commerce prior to 1800.

† Mr. Wilkins of Pennsylvania.

mittee, declining himself to be a member of that committee. Without any wish of mine, and, indeed, without my knowledge, for I was not then in the city, the Senate was pleased to place me at the head of that committee. I thought it my duty then to introduce the bill which is now again under consideration.

This is no party question; it involves no party principles, affects no party interests, seeks no party ends or objects; and as it is a question of private right and justice, it would be flagrant wrong and injustice to attempt to give to it, anywhere, the character of a party measure. The petitioners, the sufferers under the French spoliations, belong to all parties. Gentlemen of distinction, of all parties, have at different times maintained the justice of the claim. The present bill is intended for the equal relief of all sufferers; and if the measure shall become a party measure, I for one shall not pursue it. It will be wiser to leave it till better auspices shall appear.

The question, Sir, involved in this case is essentially a judicial question. It is not a question of public policy, but a question of private right; a question between the government and the petitioners; and, as the government is to be judge in its own case, it would seem to be the duty of its members to examine the subject with the most scrupulous good faith, and the most solicitous desire to do justice.

There is a propriety in commencing the examination of these claims in the Senate, because it was the Senate which, by its amendment of the convention of 1800, and its subsequent ratification of that convention, and its recognition of the declaration of the French government, effectually released the claims as against France, and for ever cut off the petitioners from all hopes of redress from that quarter. The claims, as claims against our own government, have their foundation in these acts of the Senate itself; and it may certainly be expected that the Senate will consider the effect of its own proceedings on private right and private interests with that candor and justice which belong to its high character.

It ought not to be objected to these petitioners, that their claim is old, or that they are now reviving any thing which has heretofore been abandoned. There has been no delay which is not reasonably accounted for. The convention, by which the claimants say their claims on France for these captures and con-

fiscations were released, was concluded in 1800. They immediately applied to Congress for indemnity, as will be seen by the report made in 1802 in the House of Representatives, by a committee of which a distinguished member from Virginia, not now living,* was chairman.

In 1807, on the petition of sundry merchants and others, citizens of Charleston, in South Carolina, a committee of the House of Representatives, of which Mr. Marion of that State was chairman, made a report, declaring that the committee was of opinion that the government of the United States was bound to indemnify the claimants. But at this time our affairs with the European powers at war had become exceedingly embarrassed; our government had felt itself compelled to withdraw our commerce from the ocean; and it was not until after the conclusion of the war of 1812, and after the general pacification of Europe, that a suitable opportunity occurred of presenting the subject again to the serious consideration of Congress. From that time the petitioners have been constantly before us, and the period has at length arrived proper for a final decision of their case.

Another objection, Sir, has been urged against these claims, well calculated to diminish the favor with which they might otherwise be received, and which is without any substantial foundation in fact. It is, that a great portion of them has been bought up, as a matter of speculation, and is now held by these purchasers. It has even been said, I think, on the floor of the Senate, that nine tenths, or ninety-nine hundredths, of all the claims are owned by speculators.

Such unfounded statements are not only unjust towards these petitioners themselves, but they do great mischief to other interests. I have observed that a French gentleman of distinction, formerly a resident in this country, is represented in the public newspapers as having declined the offer of a seat in the French administration, on the ground that he could not support the late convention between the United States and France; and he could not support that convention because he had learned, or heard, while in America, that the claims were no longer the property of the original sufferers, but had passed into unworthy hands. If any such thing has been learned in the United States,

• Mr. Giles.

it has been learned from sources entirely incorrect. The general fact is not so; and this prejudice, thus operating on a great national interest, an interest in regard to which we are in danger of being seriously embroiled with a foreign state, was created, doubtless, by the same incorrect and unfounded assertions which have been made relative to this other class of claims.

In regard to both classes, and to all classes of claims of American citizens on foreign governments, the statement is at variance with the facts. Those who make it have no proof of it. On the contrary, incontrovertible evidence exists of the truth of the very reverse of this statement. The claims against France, since 1800, are now in the course of adjudication. They are all, or very nearly all, presented to the proper tribunal. Proofs accompany them, and the rules of the tribunal require that, in each case, the true ownership shall be fully and exactly set out, on oath, and be proved by the papers, vouchers, and other evidence. Now, Sir, if any man is acquainted, or will make himself acquainted, with the proceedings of this tribunal, so far as to see who are the parties claiming the indemnity, he will see the absolute and enormous error of those who represent these claims to be owned, in great part, by speculators.

The truth is, Sir, that these claims, as well those since 1800 as before, are owned and possessed by the original sufferers, with such changes only as happen in regard to all other property. The original owner of ship and cargo; his representative, where such owner is dead; underwriters, who have paid losses, on account of captures and confiscations; and creditors of insolvents and bankrupts, who were interested in the claims,—these are the descriptions of persons who, in all these cases, own vastly the larger portion of the claims. This is true of the claims on Spain, as is most manifest from the proceedings of the commissioners under the Spanish treaty. It is true of the claims on France arising since 1800, as is equally manifest by the proceedings of the commissioners now sitting; and it is equally true of the claims which are the subject of this discussion, and provided for in this bill. In some instances, claims have been assigned from one to another, in the settlement of family affairs. They have been transferred, in other instances,

to secure or to pay debts; they have been transferred, sometimes, in the settlement of insurance accounts; and it is probable there are a few cases in which the necessities of the holders have compelled them to sell them. But nothing can be farther from the truth, than that they have been the general subjects of purchase and sale, and that they are now held mainly by purchasers from the original owners. They have been compared to the old, unfunded debt of the Revolution. But that consisted in scrip, of fixed amount, and which passed from hand to hand by delivery. These claims cannot so pass from hand to hand. In each case, not only the value, but the amount, is uncertain. Whether there be any claim is, in each case, a matter for investigation and proof; and so is the amount, when the justice of the claim itself is established. These circumstances are of themselves quite sufficient to prevent the easy and frequent transfer of the claims from hand to hand. They would lead us to expect that to happen which actually has happened; and that is, that the claims remain with their original owners, and their legal heirs and representatives, with such exceptions as I have already mentioned. As to the portion of the claims now owned by underwriters, it can hardly be necessary to say, that they stand on the same equity and justice as if possessed and presented by the owners of ships and goods. There is no more universal maxim of law and justice, throughout the civilized and commercial world, than that an underwriter, who has paid a loss on ships or merchandise to the owner, is entitled to whatever may be received from the property. His right accrues by the very act of payment; and if the property, or its proceeds, be afterwards recovered, in whole or in part, whether the recovery be from the sea, from captors, or from the justice of foreign states, such recovery is for the benefit of the underwriter. Any attempt, therefore, to prejudice these claims, on the ground that many of them belong to insurance companies, or other underwriters, is at war with the first principles of justice.

A short but accurate general view of the history and character of these claims is presented in the report of the Secretary of State,* on the 20th of May, 1826, in compliance with a resolution of the Senate. Allow me, Sir, to read the paragraphs.

* Mr. Clay.

"The Secretary can hardly suppose it to have been the intention of the resolution to require the expression of an argumentative opinion as to the degree of responsibility, to the American sufferers from French spoliations, which the convention of 1800 extinguished on the part of France, or devolved on the United States, the Senate itself being most competent to decide that question. Under this impression, he hopes that he will have sufficiently conformed to the purposes of the Senate, by a brief statement, prepared in a hurried moment, of what he understands to be the question.

"The second article of the convention of 1800 was in the following words: 'The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of the 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows.'

"When that convention was laid before the Senate, it gave its consent and advice that it should be ratified, provided that the second article be expunged, and that the following article be added or inserted: 'It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of the ratifications'; and it was accordingly so ratified by the President of the United States, on the 18th day of February, 1801. On the 31st of July of the same year, it was ratified by Bonaparte, First Consul of the French republic, who incorporated into the instrument of his ratification the following clause, as part of it: 'The government of the United States having added to its ratification that the convention should be in force for the space of eight years, and having omitted the second article, the government of the French republic consents to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article: *Provided that, by this retrenchment, the two states renounce the respective pretensions which are the object of the said article.*'

"The French ratification, being thus conditional, was nevertheless exchanged against that of the United States, at Paris, on the same 31st of July. The President of the United States, considering it necessary again to submit the convention, in this state, to the Senate, on the 19th day of December, 1801, it was resolved by the Senate, that they considered the said convention as fully ratified, and they returned it to the President for the usual promulgation. It was accordingly promulgated,

and thereafter regarded as a valid and binding compact. The two contracting parties thus agreed, by the retrenchment of the second article, mutually to renounce the respective pretensions which were the object of that article.

“The pretensions of the United States to which allusion is thus made arose out of the spoliation under color of French authority, in contravention of law and existing treaties. Those of France sprung from the treaty of alliance of the 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1788. Whatever obligations or indemnities, from these sources, either party had a right to demand, were respectively waived and abandoned; and the consideration which induced one party to renounce his pretensions was that of renunciation by the other party of his pretensions. What was the value of the obligations and indemnities so reciprocally renounced, can only be matter of speculation. The amount of the indemnities due to the citizens of the United States was very large; and, on the other hand, the obligation was great (to specify no other French pretensions) under which the United States were placed in the eleventh article of the treaty of alliance of the 6th of February, 1778, by which they were bound, for ever, to guaranty, from that time, the then possessions of the crown of France in America, as well as those which it might acquire by the future treaty of peace with Great Britain; all these possessions having been, it is believed, conquered, at, or not long after, the exchange of the ratifications of the convention of September, 1800, by the arms of Great Britain, from France.

“The fifth article of the Amendments to the Constitution provides, ‘Nor shall private property be taken for public use without just compensation.’ If the indemnities to which citizens of the United States were entitled for French spoliation, prior to the 30th of September, 1800, have been appropriated to absolve the United States from the fulfilment of an obligation which they had contracted, or from the payment of indemnities which they were bound to make to France, the Senate is most competent to determine how far such an appropriation is a public use of private property within the spirit of the Constitution, and whether equitable considerations do not require some compensation to be made to the claimants. The Senate is also best able to estimate the probability which existed of an ultimate recovery from France of the amount due for those indemnities, if they had not been renounced; in making which estimate, it will, no doubt, give just weight to the painful consideration, that repeated and urgent appeals have been in vain made to the justice of France, for satisfaction of flagrant wrongs committed upon property of other citizens of the United States, subsequent to the period of the 30th of September, 1800.”

Before the interference of our government with these claims, they constituted just demands against the government of France. They were not vague expectations of possible future indemnity for injuries received, too uncertain to be regarded as valuable, or be esteemed property. They were just demands, and, as such, they were property. The courts of law took notice of them as property. They were capable of being devised, of being distributed among heirs and next of kin, and of being transferred and assigned, like other legal and just debts. A claim or demand for a ship unjustly seized and confiscated is property, as clearly as the ship itself. It may not be so valuable, or so certain; but it is as clear a right, and has been uniformly so regarded by the courts of law. The papers show that American citizens had claims against the French government for six hundred and fifteen vessels, unlawfully seized and confiscated. If this were so, it is difficult to see how the government of the United States can release these claims for its own benefit, with any more propriety than it could have applied the money to its own use, if the French government had been ready to make compensation in money for the property thus illegally seized and confiscated; or how the government could appropriate to itself, without making compensation, the just claims which the owners of these six hundred and fifteen vessels held against the wrong-doers, any more than it could appropriate to itself, without making compensation, six hundred and fifteen vessels which had not been seized. I do not mean to say that the rate of compensation should be the same in both cases; I do not mean to say that a claim for a ship is of as much value as a ship; but I mean to say that both the one and the other are property, and that government cannot, with justice, deprive a man of either, for its own benefit, without making a fair compensation.

It will be perceived at once, Sir, that these claims do not rest on the ground of any neglect or omission, on the part of the government of the United States, in demanding satisfaction from France. This is not the ground. The government of the United States, in that respect, performed its full duty. It remonstrated against these illegal seizures; it insisted on redress; it sent two special missions to France, charged expressly, among other duties, with the duty of demanding indemnity. But France had her subjects of complaint, also, against the govern-

ment of the United States, which she pressed with equal earnestness and confidence, and which she would neither postpone nor relinquish, except on the condition that the United States would postpone or relinquish these claims. And, to meet this condition, and to restore harmony between the two nations, the United States did agree, first to postpone, and afterwards to relinquish, these claims of its own citizens. In other words, the government of the United States bought off the claims of France against itself, by discharging claims of our own citizens against France.

This, Sir, is the ground on which these citizens think they have a claim for reasonable indemnity against their own government. And now, Sir, before proceeding to the disputed part of the case, permit me to state what is admitted.

In the first place, then, it is universally admitted, that these petitioners once had just claims against the government of France, on account of these illegal captures and condemnations.

In the next place, it is admitted, that these claims no longer exist against France; that they have, in some way, been extinguished or released, as to her; and that she is for ever discharged from all duty of paying or satisfying them, in whole or in part.

These two points being admitted, it is then necessary, in order to support the present bill, to maintain four propositions:—

1. That these claims subsisted against France up to the time of the convention of September, 1800, between France and the United States.

2. That they were released, surrendered, or extinguished by that convention, its amendment in the Senate, and the manner of its final ratification.

3. That they were thus released, surrendered, or extinguished, for political and national considerations, for objects and purposes deemed important to the United States, but in which these claimants had no more interest than any other citizens.

4. That the amount or measure of indemnity proposed by this bill is no more than a fair and reasonable compensation, so far as we can judge by what has been done in similar cases.

These propositions I shall attempt briefly to establish.

1. Were these claims subsisting against France up to the time of the treaty? It is a conclusive answer to this question

to say, that the government of the United States insisted that they did exist, up to the time of the treaty, and demanded indemnity for them, and that the French government fully admitted their existence, and acknowledged its obligation to make such indemnity.

The negotiation which terminated in the convention was opened by a direct proposition for indemnity, made by our ministers, the justice and propriety of which were immediately acceded to by the ministers of France.

On the 7th of April, 1800, in their first letter to the ministers of France, Messrs. Ellsworth, Davie, and Murray say :—

“ Citizen Ministers : The undersigned, appreciating the value of time, and wishing by frankness to evince their sincerity, enter directly upon the great object of their mission, an object which they believe may be best obtained by avoiding to retrace minutely the too well known and too painful incidents which have rendered a negotiation necessary.

“ To satisfy the demands of justice, and render a reconciliation cordial and permanent, they propose an arrangement, such as shall be compatible with national honor and existing circumstances, to ascertain and discharge the equitable claims of the citizens of either nation upon the other, whether founded on contract, treaty, or the law of nations. The way being thus prepared, the undersigned will be at liberty to stipulate for that reciprocity and freedom of commercial intercourse between the two countries, which must essentially contribute to their mutual advantage.

“ Should this general view of the subject be approved by the ministers plenipotentiary to whom it is addressed, the details, it is presumed, may be easily adjusted, and that confidence restored which ought never to have been shaken.”

To this letter, the French ministers immediately returned the following answer :—

“ The ministers plenipotentiary of the French republic have read attentively the proposition for a plan of negotiation, which was communicated to them by the envoys extraordinary and ministers plenipotentiary of the United States of America.

“ They think that the first object of the negotiation ought to be the determination of the regulations and the steps to be followed for the estimation and indemnification of injuries for which either nation may make claim for itself, or for any of its citizens ; and that the second object is, to assure the execution of treaties of friendship and commerce

made between the two nations, and the accomplishment of the views of reciprocal advantages which suggested them."

It is certain, therefore, that the negotiation commenced in the recognition, by both parties, of the existence of individual claims, and of the justice of making satisfaction for them; and it is equally clear, that, throughout the whole negotiation, neither party suggested that these claims had already been either satisfied or extinguished; and it is indisputable that the convention itself, in the second article, expressly admitted their existence, and solemnly recognized the duty of providing for them at some future period.

It will be observed, Sir, that the French negotiators, in their first letter, while they admit the justice of providing indemnity for individual claims, bring forward, also, claims *arising under treaties*; taking care, thus early, to advance the pretensions of France on account of alleged violations by the United States of the treaties of 1778. On that part of the case, I shall say something hereafter; but I use this first letter of the French ministers at present only to show that, from the first, the French government admitted its obligation to indemnify individuals who had suffered wrongs and injuries.

The honorable member from New York* contends, Sir, that, at the time of concluding the convention, these claims had ceased to exist. He says that a war had taken place between the United States and France, and by the war the claims had become extinguished. I differ from the honorable member, both as to the fact of war, and as to the consequences to be deduced from it, in this case, even if public war had existed. If we admit, for argument's sake, that war had existed, yet we find that, on the restoration of amity, both parties admit the justice of these claims, and their continued existence; and the party against which they are preferred acknowledges her obligation, and expresses her willingness, to pay them. The mere fact of war can never extinguish any claim. If, indeed, claims for indemnity be the professed ground of war, and peace be afterwards concluded without obtaining any acknowledgment of the right, such a peace may be construed to be a relinquishment of the right, on the ground that the question has been put to the arbi-

* Mr. Wright.

tration of the sword, and decided. But, if a war be waged to enforce a disputed claim, and it be carried on till the adverse party admit the claim, and agree to provide for its payment, it would be strange indeed to hold that the claim itself was extinguished by the very war which had compelled its express recognition. Now, whatever we call that state of things which existed between the United States and France from 1798 to 1800, it is evident that neither party contended or supposed that it had been such a state of things as had extinguished individual claims to indemnification for illegal seizures and confiscations.

The honorable member, Sir, to sustain his point, must prove that the United States went to war to vindicate these claims; that they waged that war unsuccessfully; and that they were therefore glad to make peace, without obtaining payment of the claims, or any admission of their justice. I am happy, Sir, to say, that, in my opinion, facts do not authorize any such record to be made up against the United States. I think it is clear, Sir, that, whatever misunderstanding existed between the United States and France, it did not amount, at any time, to open and public war. It is certain that the amicable relations of the two countries were much disturbed; it is certain that the United States authorized armed resistance to French captures, and the captures of French vessels of war found hovering on our coast; but it is certain, also, not only that there was no declaration of war, on either side, but that the United States, under all their provocations, never authorized general reprisals on French commerce. At the very moment when the gentleman says war raged between the United States and France, French citizens came into our courts, in their own names claimed restitution for property seized by American cruisers, and obtained decrees of restitution. They claimed as citizens of France, and obtained restitution in our courts as citizens of France. It must have been a singular war, Sir, in which such proceedings could take place. Upon a fair view of the whole matter, Mr. President, it will be found, I think, that every thing done by the United States was defensive. No part of it was ever retaliatory. The United States did not take justice into their own hands.

The strongest measure, perhaps, adopted by Congress, was the act of the 28th of May, 1798. The honorable member from

New York has referred to this act, and chiefly relies upon it to prove the existence, or the commencement, of actual war. But does it prove either the one or the other?

It is not an act declaring war; it is not an act authorizing reprisals; it is not an act which, in any way, acknowledges the actual existence of war. Its whole implication and import are the other way. Its title is, "An Act more effectually to protect the commerce and coasts of the United States."

This is its preamble:—

"Whereas armed vessels, sailing under authority, or pretence of authority, from the republic of France, have committed depredations on the commerce of the United States, and have recently captured the vessels and property of citizens thereof, on and near the coasts, in violation of the law of nations, and treaties between the United States and the French nation; therefore,"

And then follows its only section, in these words:—

"Sec. 1. *Be it enacted, &c.*, That it shall be lawful for the President of the United States, and he is hereby authorized, to instruct and direct the commanders of the armed vessels belonging to the United States to seize, take, and bring into any port of the United States, to be proceeded against according to the laws of nations, any such armed vessel which shall have committed, or which shall be found hovering on the coasts of the United States for the purpose of committing, depredations on the vessels belonging to citizens thereof; and also retake any ship or vessel of any citizen or citizens of the United States, which may have been captured by any such armed vessel."

This act, it is true, authorized the use of force, under certain circumstances and for certain objects, against French vessels. But there may be acts of authorized force; there may be assaults; there may be battles; there may be captures of ships and imprisonment of persons,—and yet no general war. Cases of this kind may occur under that practice of *retortion* which is justified, when adopted for just cause, by the laws and usages of nations, and which all the writers distinguish from general war.

The first provision in this law is purely preventive and defensive; and the other hardly goes beyond it. Armed vessels hovering on our coast, and capturing our vessels, under authority, or *pretence of authority*, from a foreign state, might be captured

and brought in, and vessels already seized by them retaken. The act is limited to *armed* vessels; but why was this, if general war existed? Why was not the naval power of the country let loose at once, if there was war, against the commerce of the enemy? The cruisers of France were preying on our commerce; if there was war, why were we restrained from general reprisals on her commerce? This restraining of the operation of our naval marine to armed vessels of France, and to such of them only as should be found hovering on our coast for the purpose of committing depredations on our commerce, instead of proving a state of war, proves, I think, irresistibly, that a state of general war did not exist. But even if this act of Congress left the matter doubtful, other acts, passed at and near the same time, demonstrate the understanding of Congress to have been, that, although the relations between the two countries were greatly disturbed, yet war did not exist. On the same day (May 28, 1798) in which this act passed, on which the member from New York lays so much stress as proving the actual existence of war with France, Congress passed another act, entitled "An Act authorizing the President of the United States to raise a provisional army"; and the first section declared, that the President should be authorized, "*in the event of a declaration of war against the United States, or of actual invasion of their territory, by a foreign power, or of imminent danger of such invasion,*" to cause to be enlisted ten thousand men.

On the 16th of July following, Congress passed the law for augmenting the army, the second section of which authorized the President to raise twelve additional regiments of infantry and six troops of light dragoons, "*to be enlisted for and during the continuance of the existing differences between the United States and the French republic, unless sooner discharged.*"

The following spring, by the act of the 2d of March, 1799, entitled "An Act giving *eventual* authority to the President of the United States to augment the army," Congress provided that it should be lawful for the President of the United States, *in case war should break out between the United States and a foreign European power*, to raise twenty-four regiments of infantry. And in the act for better organizing the army, passed the next day, Congress repeats the declaration contained in a former act, that certain provisions shall not take effect *unless war shall*

break out between the United States and some European prince, potentate, or state.

On the 20th of February, 1800, an act was passed to suspend the act for augmenting the army, and this last act declared, that further enlistments should be suspended until the further order of Congress, *unless, in the recess of Congress, and during the continuance of the existing differences between the United States and the French republic, war should break out between the United States and the French republic, or imminent danger of invasion of their territory by the said republic should be discovered.*

On the 14th of May, 1800, four months before the conclusion of the convention, Congress passed an act authorizing the suspension of military appointments, and the discharge of troops raised under the provisions of the previous laws. No commentary is necessary on the texts of these statutes, to show that Congress never recognized the existence of war between the United States and France. They apprehended war might break out; and they made suitable provision for that exigency, should it occur; but it is quite impossible to reconcile the express and so often repeated declarations of these statutes, commencing in 1798, running through 1799, and ending in 1800, with the actual existence of war between the two countries, at any period within those years.

The honorable member's second principal source of argument, to make out the fact of a state of war, is the several non-intercourse acts. And here, again, it seems to me, an exactly opposite inference is the true one. In 1798, 1799, and 1800, acts of Congress were passed suspending the commercial intercourse between the United States and France, each *for one year*. Did any government ever pass a law of temporary non-intercourse with a public enemy? Such a law would be little less than an absurdity. War itself effectually creates non-intercourse. It renders all trade with the enemy illegal, and of course subjects all vessels so engaged, with their cargoes, to capture and condemnation, as enemy's property. The first of these laws was passed June 13th, 1798; the last, February 27th, 1800. Will the honorable member from New York tell us when the war commenced? When did it break out? When did those "differences," of which the acts of Congress speak, assume a character of general hostility? Was there a state of war on the 13th of

June, 1798, when Congress passed the first non-intercourse act? and did Congress, in a state of public war, limit non-intercourse with the enemy to one year? Or was there a state of peace in June, 1798? And if so, I ask again, At what time after that period, and before September, 1800, did the war break out? Difficulties of no small magnitude surround the gentleman, I think, whatever course he takes through these statutes, while he attempts to prove from them a state of war. The truth is, they prove, incontestably, a state of peace; a state of endangered, disturbed, agitated peace, but still a state of peace. Finding themselves in a state of great misunderstanding and contention with France, and seeing our commerce a daily prey to the rapacity of her cruisers, the United States preferred non-intercourse to war. This is the ground of the non-intercourse acts. Apprehending, nevertheless, that war might break out, Congress made prudent provision for it, by augmenting the military force of the country. This is the ground of the laws for raising a provisional army. The entire provisions of all these laws necessarily suppose an existing state of peace; but they imply also an apprehension that war might commence. For a state of actual war they were all unsuited; and some of them would have been, in such a state, preposterous and absurd. To a state of present peace, but disturbed, interrupted, and likely to terminate in open hostilities, they were all perfectly well adapted. As many of these acts, in express terms, speak of war as not actually existing, but as likely or liable to break out, it is clear, beyond all reasonable question, that Congress never, at any time, regarded the state of things existing between the United States and France as being a state of war.

As little did the executive government so regard it, as must be apparent from the instructions given to our ministers, when the mission was sent to France. Those instructions, having recurred to the numerous acts of wrong committed on the commerce of the United States, and the refusal of indemnity by the government of France, proceed to say: "This conduct of the French republic would well have justified an immediate declaration of war on the part of the United States; *but, desirous of maintaining peace, and still willing to leave open the door of reconciliation with France*, the United States contented themselves with preparations for defence, and measures calculated to protect their commerce."

It is equally clear, on the other hand, that neither the French government, nor the French ministers, acted on the supposition that war had existed between the two nations. It was for this reason that they held the treaties of 1778 still binding. Within a month or two of the signature of the convention, the ministers plenipotentiary of the French republic write thus to Messrs. Ellsworth, Davie, and Murray: "In the first place, they will insist upon the principle already laid down in their former note; namely, that the treaties which united France and the United States are not broken; that even war could not have broken them; but that the state of misunderstanding which has existed for some time between France and the United States, by the act of some agents rather than by the will of the respective governments, *has not been a state of war*, at least on the side of France."

Finally, Sir, the convention itself, what is it? It is not called a treaty of peace; it does not provide for putting an end to hostilities. It says not one word of any preceding war; but it does say that "differences" have arisen between the two states, and that they have therefore respectively appointed their plenipotentiaries, and given them full powers to treat upon those "differences," and to terminate the same.

But the second article of the treaty, as negotiated and agreed on by the ministers of both governments, is of itself a complete refutation of the whole argument which is urged against this bill, on the ground that the claims had been extinguished by war; since that article distinctly and expressly acknowledges the existence of the claims, and contains a solemn pledge that the two governments, not being able to agree on them at present, will negotiate further on them at a convenient future time. Whether we look, then, to the decisions of the American courts, to the acts of Congress, to the instructions of the American executive government, to the language of our ministers, to the declarations of the French government and the French ministers, or to the unequivocal language of the convention itself, as originally agreed to, we meet irresistible proof of the truth of the declaration, that the state of misunderstanding which had existed between the two countries was not war.

If the convention had remained as the ministers on both sides agreed upon it, the claimants, though their indemnity was post-

poned, would have had no just claim on their own government. But the convention did not remain in this state. The second article was struck out by the Senate; and in order to see the obvious motive of the Senate in this omission, allow me to read the whole article. It is in these words:—

“ The ministers plenipotentiary of the two parties, not being able to agree, at present, respecting the treaty of alliance of the 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows.”

The article thus stipulating to make the claims of France under the old treaties matter of further negotiation, in order to get rid of such negotiation, and the whole subject, the Senate struck out the entire article, and ratified the convention in this corrected form. France ratified the convention as thus amended, with the further declaration, that, by thus retrenching the second article, the two nations *renounce the respective pretensions which were the object of the article*. In this declaration of the French government, the Senate afterwards acquiesced; so that the government of France, by this retrenchment, agreed to renounce *her* claims under the treaties of 1778, and the United States, in like manner, renounced the claims *of their citizens* for indemnities due to them.

And this proves, Sir, the second proposition which I stated at the commencement of my remarks; namely, that these claims were released, relinquished, or extinguished by the amendment of the convention, and its ratification as amended. It is only necessary to add, on this point, that these claims for captures before 1800 would have been good claims under the late convention with France, and would have come in for a dividend in the fund provided by that convention, if they had not been released by the convention of 1800. They are now excluded from all participation in the benefit of the late convention, because of such release or extinguishment by that of 1800.

In the third place, Sir, it is to be proved, if it be not proved already, that these claims were surrendered, or released, by the government of the United States, on national considerations,

and for objects in which these claimants had no more interest than any other citizens.

Now, Sir, I do not feel called on to make out that the claims and complaints of France against the government of the United States were well founded. But it is certain that she put forth such claims and complaints, and insisted on them to the end. It is certain, that, by the treaty of alliance of 1778, the United States did guaranty to France her West India possessions. It is certain, that, by the treaty of commerce of the same date, the United States stipulated that French vessels of war might bring their prizes into the ports of the United States, and that the enemies of France should not enjoy that privilege; and it is certain that France contended that the United States had plainly violated this article, as well by their subsequent treaty with England as by other acts of the government. For the violation of these treaties she claimed indemnity from the government of the United States. Without admitting the justice of these pretensions, the government of the United States found them extremely embarrassing, and they authorized our ministers in France to *buy them off by money*.

For the purpose of showing the justice of the present bill, it is not necessary to insist that France was right in these pretensions. Right or wrong, the United States were anxious to get rid of the embarrassments which they occasioned. They were willing to compromise the matter. The existing state of things, then, was exactly this:—

France admitted that citizens of the United States had just claims against her; but she insisted that she, on the other hand, had just claims against the government of the United States. She would not satisfy our citizens till our government agreed to satisfy her. Finally, a convention is ratified, by which the claims on both sides are renounced.

The only question is, whether the relinquishment of these individual claims was the price which the United States paid for the relinquishment by France of her claims against our government. And who can doubt it? Look to the negotiation. The claims on both sides were discussed together. Look to the second article of the treaty, as originally agreed to. The claims on both sides are there reserved together; and look to the Senate's amendment, and to the subsequent declaration of the

French government, acquiesced in by the Senate; and there *the claims on both sides are renounced together*. What stronger proof could there be of mutuality of consideration? Sir, allow me to put this direct question to the honorable member from New York. If the United States did not agree to renounce these claims in consideration that France would renounce hers, what *was* the reason why they surrendered thus the claims of their own citizens? Did they do it without any consideration at all? Was the surrender wholly gratuitous? Did they thus solemnly renounce claims for indemnity, so just, so long insisted on by themselves, the object of two special missions, the subject of so much previous controversy, and at one time so near being the cause of open war,—did the government surrender and renounce them gratuitously, or for nothing? Had it no reasonable motive in the relinquishment? Sir, it is impossible to maintain any such ground.

And, on the other hand, let me ask, Was it for nothing that France relinquished, what she had so long insisted on, the obligation of the United States to fulfil the treaties of 1778? For the extinguishment of this obligation we had already offered her a large sum of money, which she had declined. Was she now willing to give it up, without any equivalent?

Sir, the whole history of the negotiation is full of proof that the individual claims of our citizens, and the government claims of France against the United States, constituted the respective *demands* of the two parties. They were brought forward together, discussed together, insisted on together. The French ministers would never consent to separate them. While they admitted in the fullest manner the claims on our side, they maintained, with persevering resolution, the claims on the side of France. It would fatigue the Senate were I to go through the whole correspondence, and show, as I could easily do, that, in every stage of the negotiation, these two subjects were kept together. I will only refer to some of the more prominent and decisive parts.

In the first place, the general instructions which our ministers received from our own government, when they undertook the mission, directed them to insist on the claims of American citizens against France, to propose a joint board of commissioners, to state those claims, and to agree to refer the complaints of

France, for infringements of the treaty of commerce, to the same board. I will read, Sir, so much of the instructions as comprehend these points.

“First. At the opening of the negotiation, you will inform the French ministers, that the United States expect from France, as an indispensable condition of the treaty, a stipulation to make to the citizens of the United States full compensation for all losses and damages which they shall have sustained by reason of irregular or illegal captures or condemnations of their vessels and other property, under color of authority or commissions from the French republic or its agents. And all captures and condemnations are deemed irregular or illegal, when contrary to the law of nations generally received and acknowledged in Europe, and to the stipulations in the treaty of amity and commerce of the 6th of February, 1778, fairly and ingenuously interpreted, while that treaty remained in force.

“Second. If these preliminaries should be satisfactorily arranged, then, for the purpose of examining and adjusting all the claims of our citizens, it will be necessary to provide for the appointment of a board of commissioners, similar to that described in the sixth and seventh articles of the treaty of amity and commerce between the United States and Great Britain.

“As the French government have heretofore complained of infringements of the treaty of amity and commerce by the United States, or their citizens, all claims for injuries thereby occasioned to France or its citizens are to be submitted to the same board; *and whatever damages they award will be allowed by the United States, and deducted from the sums awarded to be paid by France.*”

Now, Sir, suppose this board had been constituted, and suppose that it had made awards against France, in behalf of citizens of the United States, and had made awards also in favor of the government of France against the government of the United States; and then these last awards had been deducted from the amount of the former, and the property of citizens thus applied to discharge the public obligations of the country, would any body doubt that such citizens would be entitled to indemnity? And are they less entitled, because, instead of being first liquidated and ascertained, and then set off, one against the other, they are finally agreed to be set off against each other, and mutually relinquished in the lump?

Acting upon their instructions, it will be seen that the Ameri-

can ministers made an actual offer to suspend the claim for indemnities, till France should be satisfied as to her political rights under the treaties. On the 15th of July, they made this proposition to the French negotiators :—

“Indemnities to be ascertained, and secured, in the manner proposed in our project of a treaty, but not to be paid until the United States shall have offered to France an article stipulating free admission, in the ports of each, for the privateers and prizes of the other, to the exclusion of their enemies.”

This, it will be at once seen, was a direct offer to suspend the claims of our own citizens till our government should be willing to renew to France the obligation of the treaty of 1778. Was not this an offer to make use of private property for public purposes ?

On the 11th of August, the French plenipotentiaries thus write to the ministers of the United States :—

“The propositions which the French ministers have the honor to communicate to the ministers plenipotentiary of the United States are reduced to this simple alternative :—

“Either the ancient treaties, with the privileges resulting from priority, and a stipulation of reciprocal indemnities ;

“Or a new treaty, assuring equality, *without indemnity*.”

In other words, this offer is, “If you will acknowledge or renew the obligation of the old treaties, which secure to us privileges in your ports which our enemies are not to enjoy, then we will make indemnities for the losses of your citizens ; or, if you will give up all claim for such indemnities, then we will relinquish our especial privileges under the former treaties, and agree to a new treaty, which shall only put us on a footing of equality with Great Britain, our enemy.”

On the 20th of August, our ministers propose, that the former treaties, so far as they respect the rights of privateers, shall be renewed, but that it shall be optional with the United States, by the payment, within seven years, of three millions of francs, either in money or in securities issued by the French government for indemnities to our citizens, to buy off this obligation, or to buy off all its political obligations, under both the old treaties, by payment in like manner of five millions of francs.

On the 4th of September, the French ministers submit these propositions:—

“A commission shall regulate the indemnities which either of the two nations may owe to the citizens of the other.

“The indemnities which shall be due by France to the citizens of the United States shall be paid for by the United States, *and in return for which France yields the exclusive privilege resulting from the seventeenth and twenty-second articles of the treaty of commerce, and from the rights of guaranty of the eleventh article of the treaty of alliance.*”

The American ministers considered these propositions as inadmissible. They however, on their part, made an approach to them, by proposing, in substance, that it should be left optional with the United States, on the exchange of the ratification, to relinquish the indemnities, and in that case the old treaties not to be obligatory on the United States, so far as they conferred exclusive privileges on France. This will be seen in the letter of the American ministers of the 5th of September.

On the 18th of September, the American ministers say to those of France:—

“It remains only to consider the expediency of a temporary arrangement. Should such an arrangement comport with the views of France, the following principles are offered as the basis of it:—

“1st. The ministers plenipotentiary of the respective parties, not being able at present to agree respecting the former treaties and indemnities, the parties will, in due and convenient time, further treat on those subjects; and until they shall have agreed respecting the same, the said treaties shall have no operation.”

This, the Senate will see, is substantially the proposition which was ultimately accepted, and which formed the second article of the convention. By that article, these claims, on both sides, were postponed for the present; and afterwards, by other acts of the two governments, they were mutually and for ever renounced and relinquished.

And now, Sir, if any gentleman can look to the convention, look to the instructions under which it was concluded, look to the correspondence which preceded it, and look to the subsequent agreement of the two governments to renounce claims, on both sides, and not admit that the property of these private citizens

has been taken to buy off embarrassing claims of France on the government of the United States, I know not what other or further evidence could ever force that conviction on his mind.

I will conclude this part of the case by showing you how this matter was understood by the American administration which finally accepted the convention, with this renouncement of indemnities. The convention was negotiated in the administration of Mr. Adams. It was amended in the Senate, as already stated, and ratified on the 3d day of February, 1801, Mr. Adams being still in office. Being thus ratified, with the amendment, it was sent back to France, and on the 31st day of July the First Consul ratified the convention, as amended, by striking out the second article, but accompanied the ratification with this declaration: "PROVIDED THAT BY THIS RETRENCHMENT THE TWO STATES RENOUNCE THEIR RESPECTIVE PRETENSIONS, WHICH ARE THE OBJECT OF THE SAID ARTICLE."

With this declaration appended, the convention came back to the United States. Mr. Jefferson had now become President, and Mr. Madison was Secretary of State. In consequence of the declaration of the French government accompanying its ratification, and now attached to it, Mr. Jefferson again referred the convention to the Senate, and on the 19th of December, 1801, the Senate resolved that they considered it as duly ratified. Now, Sir, in order to show what Mr. Jefferson and his administration thought of this convention, and the effect of its ratification, in its then existing form, I beg leave to read an extract from an official letter from Mr. Madison to Mr. Pinkney, then our minister in Spain. Mr. Pinkney was at that time negotiating for the adjustment of our claims on Spain; and, among others, for captures committed within the territories of Spain, by French subjects. Spain objected to these claims, on the ground that the United States had claimed redress of such injuries from France. In writing to Mr. Pinkney (under date of February 6, 1804), and commenting on this plea of Spain, Mr. Madison says:—

"The plea on which it seems the Spanish government now principally relies, is the erasure of the second article from our late convention with France, by which France was released from the indemnities due for spoliations committed under her immediate responsibility to the United

States. This plea did not appear in the early objections of Spain to our claims. It was an after-thought, resulting from the insufficiency of every other plea, and is certainly as little valid as any other.

“The injuries for which indemnities are claimed from Spain, though committed by Frenchmen, took place under Spanish authority; Spain, therefore, is answerable for them. To her we have looked, and continue to look, for redress. If the injuries done to us by her resulted in any manner from injuries done to her by France, she may, if she pleases, resort to France as we resort to her. But whether her resort to France would be just or unjust is a question between her and France; not between either her and us, or us and France. We claim against her, not against France. In releasing France, therefore, we have not released her. The claims, again, from which France was released, were admitted by France, and the release was for a valuable consideration in a correspondent release of the United States from certain claims on them. The claims we make on Spain were never admitted by France, nor made on France by the United States; they made, therefore, no part of the bargain with her, and could not be included in the release.”

Certainly, Sir, words could not have been used which should more clearly affirm that these individual claims, these private rights of property, had been applied to public uses. Mr. Madison here declares, unequivocally, that these claims had been admitted by France; that they were relinquished by the government of the United States; that they were relinquished for a valuable consideration; that that consideration was a correspondent release of the United States from certain claims on them; and that the whole transaction was a bargain between the two governments. This declaration, Sir, be it remembered, was made little more than two years after the final promulgation of the convention; it was made by the Secretary of State under that administration which gave effect to the convention in its amended form; and it proves beyond mistake, and beyond doubt, the clear judgment which that administration had formed upon the true nature and character of the whole transaction.

I have said nothing, Sir, of the Louisiana convention, because neither that convention, nor any thing done under it, affects this question in the slightest degree. Great mistakes, I am aware, have existed on this point. The honorable member from New York candidly acknowledged that he himself had partaken in

this misapprehension; but as he, and others who have opposed the bill, admit that the convention which accompanied the Louisiana treaty is not connected with this subject at all, I will not detain the Senate with remarks upon it. Suffice it to say, that the demands provided for by that convention were only certain debts arising in contract, or from detention of vessels by embargo, and for certain vessels not condemned at the date of the convention of 1800, and that none of them arose from illegal captures and condemnations. And the Senate will see, that, to avoid all ambiguity on that point, this bill expressly excludes from its provisions all claims which were paid, in whole or in part, under that convention.

It only remains to show the reasonableness of the amount which the bill proposes to distribute. And this, it must be admitted, can only be fixed by estimate, and this estimate may be formed in various ways. So far as can be learned from official reports, there are something more than six hundred vessels, with their cargoes, which are supposed to form claims under this bill. Some of them, it is probable, may not be good claims; but a very great majority of that number will be, no doubt, just and fair cases.

Then the question is, What may be regarded as a just average value of each vessel and cargo? And this question is answered, in a manner as satisfactory as the nature of the case allows, By ascertaining the average value of vessels and cargoes for which compensation has been awarded under the treaty with Spain. That average was sixteen thousand eight hundred dollars for each vessel and cargo; and, taking the cases coming under this bill to be of the same average value, the whole amount of loss would exceed ten millions of dollars, without interest.

On this estimate, it seems not unreasonable to allow the sum of five millions in full satisfaction for all claims. There is no ground to suppose that the claimants will receive, out of this sum, a greater rate of indemnity than claimants have received who had claims against Spain, or than other claimants against France, whose claims have not been relinquished, because arising since 1800, will receive, under the provisions of the late French convention.

Mr. President, I have performed the duty of explaining this

case to the Senate, as I understand it. I believe the claims to be as just as were ever presented to any government. I think they constitute an honest and well-founded debt, due by the United States to these claimants; a debt which, I am persuaded, the justice of the government, and the justice of the country, will one day both acknowledge and honorably discharge.

The Appointing and Removing Power^{*}

MR. PRESIDENT, — The professed object of this bill is the reduction of executive influence and patronage. I concur in the propriety of that object. Having no wish to diminish or to control, in the slightest degree, the constitutional and legal authority of the presidential office, I yet think that the indirect and rapidly increasing influence which it possesses, and which arises from the power of bestowing office and of taking it away again at pleasure, and from the manner in which that power seems now to be systematically exercised, is productive of serious evils.

The extent of the patronage springing from this power of appointment and removal is so great, that it brings a dangerous mass of private and personal interest into operation in all great public elections and public questions. This is a mischief which has reached, already, an alarming height. The principle of republican governments, we are taught, is public virtue; and whatever tends either to corrupt this principle, to debase it, or to weaken its force, tends, in the same degree, to the final overthrow of such governments. Our representative systems suppose, that, in exercising the high right of suffrage, the greatest of all political rights, and in forming opinions on great public measures, men will act conscientiously, under the influence of public principle and patriotic duty; and that, in supporting or opposing men or measures, there will be a general prevalence of honest, intelligent judgment and manly independence. These presumptions lie at the foundation of all hope of maintaining

^{*} A Speech on the Appointing and Removing Power, delivered in the Senate of the United States, on the 16th of February, 1835, on the Passage of the Bill entitled "An Act to repeal the First and Second Sections of the Act to limit the Term of Service of certain Officers therein named."

governments entirely popular. Whenever personal, individual, or selfish motives influence the conduct of individuals on public questions, they affect the safety of the whole system. When these motives run deep and wide, and come in serious conflict with higher, purer, and more patriotic purposes, they greatly endanger that system; and all will admit that, if they become general and overwhelming, so that all public principle is lost sight of, and every election becomes a mere scramble for office, the system inevitably must fall. Every wise man, in and out of government, will endeavor, therefore, to promote the ascendancy of public virtue and public principle, and to restrain as far as practicable, in the actual operation of our institutions, the influence of selfish and private interests.

I concur with those who think, that, looking to the present, and looking also to the future, and regarding all the probabilities that await us in reference to the character and qualities of those who may fill the executive chair, it is important to the stability of government and the welfare of the people that there should be a check to the progress of official influence and patronage. The unlimited power to grant office, and to take it away, gives a command over the hopes and fears of a vast multitude of men. It is generally true, that he who controls another man's means of living controls his will. Where there are favors to be granted, there are usually enough to solicit for them; and when favors once granted may be withdrawn at pleasure, there is ordinarily little security for personal independence of character. The power of giving office thus affects the fears of all who are in, and the hopes of all who are out. Those who are *out* endeavor to distinguish themselves by active political friendship, by warm personal devotion, by clamorous support of men in whose hands is the power of reward; while those who are *in* ordinarily take care that others shall not surpass them in such qualities or such conduct as are most likely to secure favor. They resolve not to be outdone in any of the works of partisanship. The consequence of all this is obvious. A competition ensues, not of patriotic labors; not of rough and severe toils for the public good; not of manliness, independence, and public spirit; but of complaisance, of indiscriminate support of executive measures, of pliant subserviency and gross adulation. All throng and rush together to the altar of man-worship;

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and there they offer sacrifices, and pour out libations, till the thick fumes of their incense turn their own heads, and turn, also, the head of him who is the object of their idolatry.

The existence of parties in popular governments is not to be avoided ; and if they are formed on constitutional questions, or in regard to great measures of public policy, and do not run to excessive length, it may be admitted that, on the whole, they do no great harm. But the patronage of office, the power of bestowing place and emoluments, creates parties, not upon any principle or any measure, but upon the single ground of personal interest. Under the direct influence of this motive, they form round a leader, and they go for "the spoils of victory." And if the party chieftain becomes the national chieftain, he is still but too apt to consider all who have opposed him as enemies to be punished, and all who have supported him as friends to be rewarded. Blind devotion to party, and to the head of a party, thus takes place of the sentiment of generous patriotism and a high and exalted sense of public duty.

Let it not be said, Sir, that the danger from executive patronage cannot be great, since the persons who hold office, or can hold office, constitute so small a portion of the whole people.

In the first place, it is to be remembered that patronage acts, not only on those who actually possess office, but on those also who expect it, or hope for it ; and in the next place, office-holders, by their very situation, their public station, their connection with the business of individuals, their activity, their ability to help or to hurt according to their pleasure, their acquaintance with public affairs, and their zeal and devotion, exercise a degree of influence out of all proportion to their numbers.

Sir, we cannot disregard our own experience. We cannot shut our eyes to what is around us and upon us. No candid man can deny that a great, a very great change has taken place, within a few years, in the practice of the executive government, which has produced a corresponding change in our political condition. No one can deny that office, of every kind, is now sought with extraordinary avidity, and that the condition, well understood to be attached to every officer, high or low, is indiscriminate support of executive measures and implicit obedience to executive will. For these reasons, Sir, I am for arresting the

further progress of this executive patronage, if we can arrest it. I am for staying the further contagion of this plague.

The bill proposes two measures. One is to alter the duration of certain offices, now limited absolutely to four years; so that the limitation shall be qualified or conditional. If the officer is in default, if his accounts are not settled, if he retains or misapplies the public money, information is to be given thereof, and thereupon his commission is to cease. But if his accounts are all regularly settled, if he collects and disburses the public money faithfully, then he is to remain in office, unless, for some other cause, the President sees fit to remove him. This is the provision of the bill. It applies only to certain enumerated officers, who may be called accounting officers; that is to say, officers who receive and disburse the public money. Formerly, all these officers held their places at the pleasure of the President. If he saw no just cause for removing them, they continued in their situations, no fixed period being assigned for the expiration of their commissions. But the act of 1820 limited the commissions of these officers to four years. At the end of four years, they were to go out, without any removal, however well they might have conducted themselves, or however useful to the public their further continuance in office might be. They might be nominated again, or might not; but their commissions expired.

Now, Sir, I freely admit that considerable benefit has arisen from this law. I agree that it has, in some instances, secured promptitude, diligence, and a sense of responsibility. These were the benefits which those who passed the law expected from it; and these benefits have, in some measure, been realized. But I think that this change in the tenure of office, together with some good, has brought along a far more than equivalent amount of evil. By the operation of this law, the President can deprive a man of office without taking the responsibility of removing him. The law itself vacates the office, and gives the means of rewarding a friend without the exercise of the power of removal at all. Here is increased power, with diminished responsibility. Here is a still greater dependence, for the means of living, on executive favor, and, of course, a new dominion acquired over opinion and over conduct. The power of removal is, or at least formerly was, a suspected and odious

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power. Public opinion would not always tolerate it; and still less frequently did it approve it. Something of character, something of the respect of the intelligent and patriotic part of the community, was lost by every instance of its unnecessary exercise. This was some restraint. But the law of 1820 took it all away. It vacated offices periodically, by its own operation, and thus added to the power of removal, which it left still existing in full force, a new and extraordinary facility for the extension of patronage, influence, and favoritism.

I would ask every member of the Senate if he does not perceive, daily, effects which may be fairly traced to this cause. Does he not see a union of purpose, a devotion to power, a co-operation in action, among all who hold office, quite unknown in the earlier periods of the government? Does he not behold, every hour, a stronger development of the principle of personal attachment, and a corresponding diminution of genuine and generous public feeling? Was indiscriminate support of party measures, was unwavering fealty, was regular suit and service, ever before esteemed such important and essential parts of official duty?

Sir, the theory of our institutions is plain; it is, that government is an agency created for the good of the people, and that every person in office is the agent and servant of the people. Offices are created, not for the benefit of those who are to fill them, but for the public convenience; and they ought to be no more in number, nor should higher salaries be attached to them, than the public service requires. This is the theory. But the difficulty in practice is, to prevent a direct reversal of all this; to prevent public offices from being considered as intended for the use and emolument of those who can obtain them. There is a headlong tendency to this, and it is necessary to restrain it by wise and effective legislation. There is still another, and perhaps a greatly more mischievous result, of extensive patronage in the hands of a single magistrate, to which I have already incidentally alluded; and that is, that men in office have begun to think themselves mere agents and servants of the appointing power, and not agents of the government or the country. It is, in an especial manner, important, if it be practicable, to apply some corrective to this kind of feeling and opinion. It is necessary to bring back public officers to the

conviction, that they belong to the country, and not to any administration, nor to any one man. The army is the army of the country; the navy is the navy of the country; neither of them is either the mere instrument of the administration for the time being, nor of him who is at the head of it. The post-office, the land-office, the custom-house, are, in like manner, institutions of the country, established for the good of the people; and it may well alarm the lovers of free institutions, when all the offices in these several departments are spoken of, in high places, as being but "spoils of victory," to be enjoyed by those who are successful in a contest, in which they profess this grasping of the spoils to have been the object of their efforts.

This part of the bill, therefore, Sir, is a subject for fair comparison. We have gained something, doubtless, by limiting the commissions of these officers to four years. But have we gained as much as we have lost? And may not the good be preserved, and the evil still avoided? Is it not enough to say, that if, at the end of four years, moneys are retained, accounts unsettled, or other duties unperformed, the office shall be held to be vacated, without any positive act of removal?

For one, I think the balance of advantage is decidedly in favor of the present bill. I think it will make men more dependent on their own good conduct, and less dependent on the will of others. I believe it will cause them to regard their country more, their own duty more, and the favor of individuals less. I think it will contribute to official respectability, to freedom of opinion, to independence of character; and I think it will tend, in no small degree, to prevent the mixture of selfish and personal motives with the exercise of high political duties. It will promote true and genuine republicanism, by causing the opinion of the people respecting the measures of government, and the men in government, to be formed and expressed without fear or favor, and with a more entire regard to their true and real merits or demerits. It will be, so far as its effects reach, an auxiliary to patriotism and public virtue, in their warfare against selfishness and cupidity.

The second check on executive patronage contained in this bill is of still greater importance than the first. This provision is, that, whenever the President removes any of these officers from office, he shall state to the Senate the reasons for such re-

removal. This part of the bill has been opposed, both on constitutional grounds and on grounds of expediency.

The bill, it is to be observed, expressly recognizes and admits the actual existence of the power of removal. I do not mean to deny, and the bill does not deny, that, at the present moment, the President may remove these officers at will, because the early decision adopted that construction, and the laws have since uniformly sanctioned it. The law of 1820, intended to be repealed by this bill, expressly affirms the power. I consider it, therefore, a settled point; settled by construction, settled by precedent, settled by the practice of the government, and settled by statute. At the same time, after considering the question again and again within the last six years, I am very willing to say, that, in my deliberate judgment, the original decision was wrong. I cannot but think that those who denied the power in 1789 had the best of the argument; and yet I will not say that I know myself so thoroughly as to affirm, that this opinion may not have been produced, in some measure, by that abuse of the power which has been passing before our eyes for several years. It is possible that this experience of the evil may have affected my view of the constitutional argument. It appears to me, however, after thorough and repeated and conscientious examination, that an erroneous interpretation was given to the Constitution, in this respect, by the decision of the first Congress; and I will ask leave to state, shortly, the reasons for that opinion, although there is nothing in this bill which proposes to disturb that decision.

The Constitution nowhere says one word of the power of removal from office, except in the case of conviction on impeachment. Wherever the power exists, therefore, except in cases of impeachment, it must exist as a constructive or incidental power. If it exists in the President alone, it must exist in him because it is attached to something else, or included in something else, or results from something else, which is granted to the President. There is certainly no specific grant; it is a power therefore, the existence of which, if proved at all, is to be proved by inference and argument. In the only instance in which the Constitution speaks of removal from office, as I have already said, it speaks of it as the exercise of *judicial* power; that is to say, it speaks of it as one part of the judgment of the Senate,

in cases of conviction on impeachment. No other mention is made, in the whole instrument, of any power of removal. Whence, then, is the power derived to the President?

It is usually said, by those who maintain its existence in the single hands of the President, that the power is derived from that clause of the Constitution which says, "The executive power shall be vested in a President." The power of removal, they argue, is, in its nature, an executive power; and, as the executive power is thus vested in the President, the power of removal is necessarily included.

It is true, that the Constitution declares that the executive power shall be vested in the President; but the first question which then arises is, *What is executive power? What is the degree, and what are the limitations?* Executive power is not a thing so well known, and so accurately defined, as that the written constitution of a limited government can be supposed to have conferred it in the lump. *What is executive power? What are its boundaries? What model or example had the framers of the Constitution in their minds, when they spoke of "executive power"?* Did they mean executive power as known in England, or as known in France, or as known in Russia? Did they take it as defined by Montesquieu, by Burlamaqui, or by De Lolme? All these differ from one another as to the extent of the executive power of government. *What, then, was intended by "the executive power"?* Now, Sir, I think it perfectly plain and manifest, that, although the framers of the Constitution meant to confer executive power on the President, yet they meant to define and limit that power, and to confer no more than they did thus define and limit. When they say it shall be vested in a President, they mean that one magistrate, to be called a President, shall hold the executive authority; but they mean, further, that he shall hold this authority according to the grants and limitations of the Constitution itself.

They did not intend, certainly, a sweeping gift of prerogative. They did not intend to grant to the President whatever might be construed, or supposed, or imagined to be executive power; and the proof that they meant no such thing is, that, immediately after using these general words, they proceed specifically to enumerate his several distinct and particular authorities; to fix and define them; to give the Senate an essential control over

the exercise of some of them, and to leave others uncontrolled. By the executive power conferred on the President, the Constitution means no more than that portion which itself creates, and which it qualifies, limits, and circumscribes.

A general survey of the frame of the Constitution will satisfy us of this. That instrument goes all along upon the idea of dividing the powers of government, so far as practicable, into three great departments. It describes the powers and duties of these departments in an article allotted to each. As first in importance and dignity, it begins with the legislative department. The first article of the Constitution, therefore, commences with the declaration, that "all legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." The article goes on to prescribe the manner in which Congress is to be constituted and organized, *and then proceeds to enumerate, specifically, the powers intended to be granted*; and adds the general clause, conferring such authority as may be necessary to carry granted powers into effect. Now, Sir, no man doubts that this is a limited legislature; that it possesses no powers but such as are granted by express words or necessary implication; and that it would be quite preposterous to insist that Congress possesses any particular legislative power, merely because it is, in its nature, a legislative body, if no grant can be found for it in the Constitution itself.

Then comes, Sir, the second article, creating an executive power; and it declares, that "the executive power shall be vested in a President of the United States." After providing for the mode of choosing him, it immediately proceeds to enumerate, specifically, the powers which he shall possess and exercise, and the duties which he shall perform. I consider the language of this article, therefore, precisely analogous to that in which the legislature is created; that is to say, I understand the Constitution as saying that "the executive power *herein granted* shall be vested in a President of the United States."

In like manner, the third article, or that which is intended to arrange the judicial system, begins by declaring that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." But these general words do

not show *what extent* of judicial power is vested in the courts of the United States. All that is left to be done, and is done, in the following sections, by express and well-guarded provisions.

I think, therefore, Sir, that very great caution is to be used, and the ground well considered, before we admit that the President derives any distinct and specific power from those general words which vest the executive authority in him. The Constitution itself does not rest satisfied with these general words. It immediately goes into particulars, and carefully enumerates the several authorities which the President shall possess. The very first of the enumerated powers is the command of the army and navy. This, most certainly, is an executive power. And why is it particularly set down and expressed, if any power was intended to be granted under the general words? This would pass, if any thing would pass, under those words. But enumeration, specification, particularization, was evidently the design of the framers of the Constitution, in this as in other parts of it. I do not, therefore, regard the declaration that the executive power shall be vested in a President as being any grant at all; any more than the declaration that the legislative power shall be vested in Congress constitutes, by itself, a grant of such power. In the one case, as in the other, I think the object was to describe and denominate the department, which should hold, respectively, the legislative and the executive authority; very much as we see, in some of the State constitutions, that the several articles are headed with the titles "legislative power," "executive power," "judicial power"; and this entitling of the articles with the name of the power has never been supposed, of itself, to confer any authority whatever. It amounts to no more than naming the departments.

If, then, the power of removal be admitted to be an executive power, still it must be sought for and found among the enumerated executive powers, or fairly implied from some one or more of them. It cannot be implied from the general words. The power of appointment was not left to be so implied; why, then, should the power of removal have been so left? They are both closely connected; one is indispensable to the other; why, then, was one carefully expressed, defined, and limited, and not one word said about the other?

Sir, I think the whole matter is sufficiently plain. Nothing is

said in the Constitution about the power of removal, because it is not a separate and distinct power. It is part of the power of appointment, naturally going with it or necessarily resulting from it. The Constitution or the laws may separate these powers, it is true, in a particular case, as is done in respect to the judges, who, though appointed by the President and Senate, cannot be removed at the pleasure of either or of both. So a statute, in prescribing the tenure of any other office, may place the officer beyond the reach of the appointing power. But where no other tenure is prescribed, and officers hold their places at will, that will is necessarily the will of the appointing power; because the exercise of the power of appointment at once displaces such officers. The power of placing one man in office necessarily implies the power of turning another out. If one man be Secretary of State, and another be appointed, the first goes out by the mere force of the appointment of the other, without any previous act of removal whatever. And this is the practice of the government, and has been, from the first. In all the removals which have been made, they have generally been effected simply by making other appointments. I cannot find a case to the contrary. There is no such thing as any distinct official act of removal. I have looked into the practice, and caused inquiries to be made in the departments, and I do not learn that any such proceeding is known as an entry or record of the removal of an officer from office; and the President could only act, in such cases, by causing some proper record or entry to be made, as proof of the fact of removal. I am aware that there have been some cases in which notice has been sent to persons in office that their services are, or will be, after a given day, dispensed with. These are usually cases in which the object is, not to inform the incumbent that he is *removed*, but to tell him that a successor either is, or by a day named will be, appointed. If there be any instances in which such notice is given without express reference to the appointment of a successor, they are few; and even in these, such reference must be implied; because in no case is there any distinct official act of removal, that I can find, unconnected with the act of appointment. At any rate, it is the usual practice, and has been from the first, to consider the appointment as producing the removal of the previous incumbent. When the President desires to remove a

person from office, he sends a message to the Senate nominating some other person. The message usually runs in this form: "I nominate A. B. to be collector of the customs, &c., in the place of C. D., removed." If the Senate advise and consent to this nomination, C. D. is effectually out of office, and A. B. is in, in his place. The same effect would be produced, if the message should say nothing of any removal. Suppose A. B. to be Secretary of State, and the President to send us a message, saying merely, "I nominate C. D. to be Secretary of State." If we confirm this nomination, C. D. becomes Secretary of State, and A. B. is necessarily removed.

I have gone into these details and particulars, Sir, for the purpose of showing, that, not only in the nature of things, but also according to the practice of the government, the power of removal is incident to the power of appointment. It belongs to it, is attached to it, forms a part of it, or results from it.

If this be true, the inference is manifest. If the power of removal, when not otherwise regulated by Constitution or law, be part and parcel of the power of appointment, or a necessary incident to it, then whoever holds the power of appointment holds also the power of removal. But it is the President and the Senate, and not the President alone, who hold the power of appointment; and therefore, according to the true construction of the Constitution, it should be the President and Senate, and not the President alone, who hold the power of removal.

The decision of 1789 has been followed by a very strange and indefensible anomaly, showing that it does not rest on any just principle. The natural connection between the appointing power and the removing power has, as I have already stated, always led the President to bring about a removal by the process of a new appointment. This is quite efficient for his purpose, when the Senate confirms the new nomination. One man is then turned out, and another put in. But the Senate sometimes *rejects* the new nomination; and what then becomes of the old incumbent? Is he out of office, or is he still in? He has not been turned out by any exercise of the power of appointment, for no appointment has been made. That power has not been exercised. He has not been removed by any distinct and separate act of removal, for no such act has been performed, or attempted. Is he still in, then, or is he out? Where is he? In

this dilemma, Sir, those who maintain the power of removal as existing in the President alone are driven to what seems to me very near absurdity. The incumbent has not been removed by the appointing power, since the appointing power has not been exercised. He has not been removed by any distinct and independent act of removal, since no such act has been performed.

They are forced to the necessity, therefore, of contending that the removal has been accomplished by the mere *nomination* of a successor; so that the removing power is made incident, not to the appointing power, but to one part of it; that is, to the *nominating* power. The nomination, not having been assented to by the Senate, it is clear, has failed, as the first step in the process of appointment. But though thus rendered null and void in its main object, as the first process in making an appointment, it is held to be good and valid, nevertheless, to bring about that which *results from an appointment*; that is, the removal of the person actually in office. In other words, the nomination produces the consequences of an appointment, or some of them, though it be itself no appointment, and effect no appointment. This, Sir, appears to me to be any thing but sound reasoning and just construction.

But this is not all. The President has sometimes sent us a nomination to an office already filled, and, before we have acted upon it, has seen fit to withdraw it. What is the effect of such a nomination? If a *nomination*, merely as such, turns out the present incumbent, then he is out, let what will become afterwards of the nomination. But I believe the President has acted upon the idea that a nomination made, and at any time afterwards withdrawn, does *not* remove the actual incumbent.

Sir, even this is not the end of the inconsistencies into which the prevailing doctrine has led. There have been cases in which nominations to offices already filled have come to the Senate, remained here for weeks, or months, the incumbents all the while continuing to discharge their official duties, and relinquishing their offices only when the nominations of their successors have been confirmed, and commissions issued to them; so that, if a nomination be confirmed, the *nomination itself* makes no removal; the removal then waits to be brought about by the *appointment*. But if the nomination be *rejected*,

then the *nomination itself*, it is contended, has effected the removal. Who can defend opinions which lead to such results?

These reasons, Sir, incline me strongly to the opinion, that, upon a just construction of the Constitution, the power of removal is part of, or a necessary result from, the power of appointment, and, therefore, that it *ought to have been* exercised by the Senate concurrently with the President.

The argument may be strengthened by various illustrations. The Constitution declares that Congress may vest the appointment of inferior officers in the President alone, in the courts of law, or in the heads of departments; and Congress has passed various acts providing for appointments, according to this regulation of the Constitution. Thus the Supreme Court, and other courts of the United States, have authority to appoint their clerks; heads of departments also appoint their own clerks, according to statute provisions; and it has never been doubted that these courts, and these heads of departments, may remove their clerks at pleasure, although nothing is said in the laws respecting such power of removal. Now, it is evident that neither the courts nor the heads of departments acquire the right of removal under a general grant of executive power, for none such is made to them; nor upon the ground of any general injunction to see the laws executed, for no such general injunction is addressed to them. They nevertheless hold the power of removal, as all admit, and they must hold it, therefore, simply as incident to, or belonging to, the power of appointment. There is no other clause under which they can possibly claim it.

Again; let us suppose that the Constitution had given to the President the power of appointment, without consulting the Senate. Suppose it had said, "The President shall appoint ambassadors, other public ministers, judges of the Supreme Court, and all other officers of the United States." If the Constitution had stood thus, the President would unquestionably have possessed the power of removal, where the tenure of office was not fixed; and no man, I imagine, would in that case have looked for the removing power either in that clause which says the executive authority shall be vested in the President, or in that other clause which makes it his duty to see the laws faithfully executed. Every body would have said, "The President possesses an uncontrolled power of appointment, and that

necessarily carries with it an uncontrolled power of removal, unless some permanent tenure be given to the office by the Constitution, or by law."

And now, Sir, let me state, and examine, the main argument, on which the decision of 1789 appears to rest it.

The most plausible reasoning brought forward on that occasion may be fairly stated thus:—"The executive power is vested in the President; this is the general rule of the Constitution. The association of the Senate with the President, in exercising a particular function belonging to the executive power, is an exception to this general rule, and exceptions to general rules are to be taken strictly; therefore, though the Senate partakes of the appointing power, by express provision, yet, as nothing is said of its participation in the removing power, such participation is to be excluded."

The error of this argument, if I may venture to call it so, considering who used it,* lies in this. It supposes the power of removal to be held by the President under the general grant of executive power. Now, it is certain that the power of appointment is not held under that general grant, because it is particularly provided for, and is conferred, in express terms, on the President and Senate. If, therefore, the power of removal be a natural appendage to the power of appointment, then it is not conferred by the general words granting executive power to the President, but is conferred by the special clause which gives the appointing power to the President and Senate. So that the spirit of the very rule on which the argument of 1789, as I have stated it, relies, appears to me to produce a directly opposite result; for, if exceptions to a general rule are to be taken strictly, when expressed, it is still more clear, when they are not expressed at all, that they are not to be implied except on evident and clear grounds; and as the general power of appointment is confessedly given to the President and Senate, no exception is to be implied in favor of one part of that general power, namely, the removing part, unless for some obvious and irresistible reason. In other words, this argument which I am answering is not sound in its premises, and therefore not sound in its conclusion, if the grant of the power of appointment does naturally

* Mr. Madison. See the Discussion in Gales and Seaton's Debates in Congress, Vol. I. p. 473 *et seq.*

include also the power of removal, when this last power is not otherwise expressly provided for; because, if the power of removal belongs to the power of appointment, or necessarily follows it, then it has gone with it into the hands of the President and Senate; and the President does not hold it alone, as an implication or inference from the grant to him of general executive powers.

The true application of that rule of construction, thus relied on, would present the argument, I think, in this form: "The appointing power is vested in the President and Senate; this is the general rule of the Constitution. The removing power is part of the appointing power; it cannot be separated from the rest, but by supposing that an exception was intended; but all exceptions to general rules are to be taken strictly, even when expressed; and, for a much stronger reason, they are not to be implied, when not expressed, unless inevitable necessity of construction requires it."

On the whole, Sir, with the diffidence which becomes one who is reviewing the opinions of some of the ablest and wisest men of the age, I must still express my own conviction, that the decision of Congress in 1789, which separated the power of removal from the power of appointment, was founded on an erroneous construction of the Constitution, and that it has led to great inconsistencies, as well as to great abuses, in the subsequent, and especially in the more recent, history of the government.

Much has been said now, and much was said formerly, about the inconvenience of denying this power to the President alone. I agree that an argument drawn from this source may have weight, in a doubtful case; but it is not to be permitted that we shall presume the existence of a power merely because we think it would be convenient. Nor is there, I think, any such glaring, striking, or certain inconvenience as has been suggested. Sudden removals from office are seldom necessary; we see how seldom, by reference to the practice of the government under all administrations which preceded the present. And if we look back over the removals which have been made in the last six years, there is no man who can maintain that there is one case in a hundred in which the country would have suffered the least inconvenience if no removal had been made without the con-

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sent of the Senate. Party might have felt the inconvenience, but the country never. Many removals have been made (by new appointments) during the session of the Senate; and if there has occurred one single case, in the whole six years, in which the public convenience required the removal of an officer in the recess, such case has escaped my recollection. Besides, it is worthy of being remembered, when we are seeking for the true intent of the Constitution on this subject, that there is reason to suppose that its framers expected the Senate would be in session a much larger part of the year than the House of Representatives, so that its concurrence could generally be had, at once, on any question of appointment or removal.

But this argument, drawn from the supposed inconvenience of denying an absolute power of removal to the President, suggests still another view of the question. The argument asserts, that it must have been the intention of the framers of the Constitution to confer the power on the President, for the sake of convenience, and as an absolutely necessary power in his hands. Why, then, did they leave their intent doubtful? *Why did they not confer the power in express terms?* Why were they thus totally silent on a point of so much importance?

Seeing that the removing power naturally belongs to the appointing power; seeing that, in other cases, in the same Constitution, its framers have left the one with the consequence of drawing the other after it, — if, in this instance, they meant to do what was uncommon and extraordinary, that is to say, if they meant to separate and divorce the two powers, why did they not say so? Why did they not express their meaning in plain words? Why should they take up the appointing power, and carefully define it, limit it, and restrain it, and yet leave to vague inference and loose construction an equally important power, which all must admit to be closely connected with it, if not a part of it? If others can account for all this silence respecting the removing power, upon any other ground than that the framers of the Constitution regarded both powers as one, and supposed they had provided for them together, I confess I cannot. I have the clearest conviction, that they looked to no other mode of displacing an officer than by impeachment, or by the regular appointment of another person to the same place.

But, Sir, whether the decision of 1789 were right or wrong,

the bill before us applies to the actually existing state of things, It recognizes the President's power of removal, in express terms, as it has been practically exercised, independently of the Senate. The present bill does not disturb the power; but I wish it not to be understood that the power is, even now, beyond the reach of legislation. I believe it to be within the just power of Congress to reverse the decision of 1789, and I mean to hold myself at liberty to act, hereafter, upon that question, as I shall think the safety of the government and of the Constitution may require. The present bill, however, proceeds upon the admission that the power does at present exist. Its words are:—

“Sec. 3. *And be it further enacted*, That, in all nominations made by the President to the Senate, to fill vacancies occasioned by the exercise of the President's power to remove the said officers mentioned in the second section of this act, the fact of the removal shall be stated to the Senate, at the same time that the nomination is made, with a statement of the reasons for which such officer may have been removed.”

In my opinion, this provision is entirely constitutional, and highly expedient.

The regulation of the tenure of office is a common exercise of legislative authority, and the power of Congress in this particular is not at all restrained or limited by any thing contained in the Constitution, except in regard to judicial officers. All the rest is left to the ordinary discretion of the legislature. Congress may give to offices which it creates (except those of judges) what duration it pleases. When the office is created, and is to be filled, the President is to nominate the candidate to fill it; but when he comes into the office, he comes into it upon the conditions and restrictions which the law may have attached to it. If Congress were to declare by law that the Attorney-General, or the Secretary of State, should hold his office during good behavior, I am not aware of any ground on which such a law could be held unconstitutional. A provision of that kind in regard to such officers might be unwise, but I do not perceive that it would transcend the power of Congress.

If the Constitution had not prescribed the tenure of judicial office, Congress might have thought it expedient to give the judges just such a tenure as the Constitution has itself provided; that is

to say, a right to hold during good behavior; and I am of opinion, that such a law would have been perfectly constitutional. It is by law, in England, that the judges are made independent of the removing power of the crown. I do not think that the Constitution, by giving the power of appointment, or the power both of appointment and removal, to the President and Senate, intended to impose any restraint on the legislature, in regard to its authority of regulating the duties, powers, duration, or responsibility of office. I agree, that Congress ought not to do any thing which shall essentially impair that right of nomination and appointment of certain officers, such as ministers, judges, &c., which the Constitution has vested in the President and Senate. But while the power of nomination and appointment is left fairly where the Constitution has placed it, I think the whole field of regulation is open to legislative discretion. If a law were to pass, declaring that district attorneys, or collectors of customs, should hold their offices four years, unless removed on conviction for misbehavior, no one could doubt its constitutional validity; because the legislature is naturally competent to prescribe the tenure of office. And is a reasonable check on the power of removal any thing more than a qualification of the tenure of office? Let it be always remembered, that the President's removing power, as now exercised, is claimed and held under the general clause vesting in him the executive authority. It is implied, or inferred, from that clause alone.

Now, if it is properly derived from that source, since the Constitution does not say how it shall be limited, how defined, or how carried into effect, it seems especially proper for Congress, under the general provision of the Constitution which gives it authority to pass all laws necessary to carry into effect the powers conferred on any department, to regulate the subject of removal. And the regulation here required is of the gentlest kind. It only provides that the President shall make known to the Senate his reasons for removal of officers of this description, when he does see fit to remove them. It might, I think, very justly go farther. It might, and perhaps it ought, to prescribe the form of removal, and the proof of the fact. It might, I also think, declare that the President should only suspend officers, at pleasure, till the next meeting of the Senate, according to the amendment suggested by the honorable member from Kentucky ;

and, if the present practice cannot be otherwise checked, this provision, in my opinion, ought hereafter to be adopted. But I am content with the slightest degree of restraint which may be sufficient to arrest the totally unnecessary, unreasonable, and dangerous exercise of the power of removal. I desire only, for the present at least, that, when the President turns a man out of office, he should give his reasons for it to the Senate, when he nominates another person to fill the place. Let him give these reasons, and stand on them. If they are fair and honest, he need have no fear in stating them. It is not to invite any trial; it is not to give the removed officer an opportunity of defence; it is not to excite controversy and debate; it is simply that the Senate, and ultimately the public, may know the grounds of removal. I deem this degree of regulation, at least, necessary; unless we are willing to submit all these officers to an absolute and a perfectly irresponsible removing power; a power which, as recently exercised, tends to turn the whole body of public officers into partisans, dependants, favorites, sycophants, and man-worshippers.

Mr. President, without pursuing the discussion further, I will detain the Senate only while I recapitulate the opinions which I have expressed; because I am far less desirous of influencing the judgment of others, than of making clear the grounds of my own judgment.

I think, then, Sir, that the power of appointment naturally and necessarily includes the power of removal, where no limitation is expressed, nor any tenure but that at will declared. The power of appointment being conferred on the President *and Senate*, I think the power of removal went along with it, and should have been regarded as a part of it, and exercised by the same hands. I think, consequently, that the decision of 1789, which *implied* a power of removal separate from the appointing power, was erroneous.

But I think the decision of 1789 has been established by practice, and recognized by subsequent laws, as the settled construction of the Constitution, and that it is our duty to act upon the case accordingly, for the present; without admitting that Congress may not, hereafter, if necessity shall require it, reverse the decision of 1789. I think the legislature possesses the power of regulating the condition, duration, qualification, and tenure

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of office, in all cases where the Constitution has made no express provision on the subject.

I am, therefore, of opinion, that it is competent for Congress to declare by law, as one qualification of the tenure of office, that the incumbent shall remain in place till the President shall remove him, for reasons to be stated to the Senate. And I am of opinion that this qualification, mild and gentle as it is, will have *some* effect in arresting the evils which beset the progress of the government, and seriously threaten its future prosperity.

These are the reasons for which I give my support to this bill.

The Regulation of the Deposits^{*}

AMONGST the amendments moved by Mr. Webster to the bill for regulating the deposits of the public money, and adopted, was the following additional section, viz. : —

“Section 9. That all the warrants or drafts of the Treasurer of the United States, or such as shall be authorized by the Treasury Department, drawn on any deposit bank, shall be payable in gold and silver, if the holder desire to receive the same ; and no such warrant or draft, nor any check, draft, or bill of exchange, given or received in payment thereof, shall be expressed to be payable in ‘current bank-bills,’ or in any other medium than the lawful currency of the country.”

On offering this amendment, Mr. Webster spoke as follows : —

IN discussing the provisions and merits of this bill, it is necessary so often to allude to the Bank of the United States, and the withdrawal of the government deposits from that institution, that I will take occasion to say a few words, and they shall be very few, upon that subject. In the first place, I wish to say that I consider the question of renewing the bank charter as entirely settled. It cannot be renewed. Public opinion, very unfortunately, as I think, for the country, has decided against it; and while there is a strong and prevailing sentiment in the minds of the community against a measure, it is quite useless to propose it. For myself, I shall take no part in any attempt to renew the charter of the bank. The people have decided against its continuance, and it must expire.

Nor shall I, if I remain in public life, join in any attempt, at any time hereafter, to establish a new national bank, till experience of its want shall have satisfied the country of its great

^{*} Remarks made in the Senate of the United States, on the 26th of February, 1835, on the Bill to regulate the Deposits of the Public Money.

utility or indispensable necessity. That the time will come when the country will feel the fullest conviction of this necessity, I do not doubt; but that conviction, I think, is likely to be brought about only by experience. If, while I remain here, there shall be a general call of the country for a new national institution, I shall, of course, be ready to aid in its establishment, on principles which have been proved to be safe, and with any amendments which experience may have suggested. But for myself, it is my stated purpose to do nothing more in relation to a national bank, till a decisive lead shall be given in that direction by the public opinion.

In the next place, I wish to say, that the "experiment," upon the success of which gentlemen have felicitated themselves, has not, in my opinion, undergone any trial at all. It has been put to no test.

There are two public objects, both of great importance, in the accomplishment of which the Bank of the United States, in my opinion, has been generally successful. I mean the transmission of public funds, and other facilities to the operations of the treasury, as one of these objects; and a safe, cheap, and admirable system of internal exchanges, as the other. These objects were both attained by the skilful administration of the bank, to such a degree as left little or nothing to be wished. By internal exchanges, I intend the whole operation of internal bills of exchange, and the circulation, also, of a paper currency, always safe, founded on solid capital, and everywhere, in every nook and corner of the country, as well as on the exchanges of the great cities, always of the same value as gold and silver, except, indeed, where the bills of the bank have been preferred to gold and silver, as being better suited to the purposes of remittance. Now, Sir, it has been predicted that the State banks, selected as deposit banks, could equally well accomplish all these objects; that they could as readily, and as completely, facilitate the operations of the treasury; and that they could, and would, also furnish a general currency, as sound and as well accredited; and that they could, and would, conduct the internal exchanges of commerce as safely and as cheaply. Of all this I have doubted; but the day of argument is passed, and the system now awaits the unerring result of experience. But the time for that experience has not yet arrived. Up to the present moment

the country has enjoyed, and does now enjoy, the benefit of the circulation of the bills of the Bank of the United States. The amount of that circulation is now eighteen or twenty millions, and it is diffused over every part of the country, and abounds, more especially, in those places where it is more particularly needed, and, indeed, is kept there because it is there most needed. Here is a medium of exchange everywhere to be had, and to be had without charge. A hundred dollars in gold and silver buy a post-note of the Bank of the United States in New Orleans, or Mobile, or St. Louis, and it is remitted to Philadelphia or New York without danger and without expense. The whole mass of the circulation of the Bank of the United States, therefore, is, at this moment, in active operation, in expediting and facilitating exchanges, and, indeed, in assisting the operations of the treasury, and the deposit banks themselves, by affording a medium of universal credits. The present system, therefore, still rests, substantially, on the Bank of the United States.

It is the credit and the circulation of the bills of that bank which still sustain the accustomed operations of internal commerce; and the bank still exercises all that wholesome control over the currency of the country which it has heretofore done. But the bank is about to expire. These eighteen or twenty millions must be gradually withdrawn from circulation, though they may come in very slowly, and be drawn very reluctantly, from the hands which hold them; so that the circulation of the bills may, more or less, continue for a considerable time after the charter shall expire. In this way I have no doubt of its continuance to do good, for some time after its legal existence shall have ceased. There will be no rush for payment of its notes and bills, because there will be no doubt about the sufficiency of the fund. There will be no haste to get rid of them, because they will be better than any other paper, and better than gold and silver.

But the bank must wind up its affairs; its debts must be collected, and its circulation, after a while, entirely withdrawn. And when this takes place, or begins to take place, then, and not till then, the existing government "experiment" will begin to be put to the proof. At present, all is fair weather; the question is, How will it be, when it becomes necessary to fill up the void occasioned by withdrawing the bills of the Bank of the

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United States by notes of the deposit banks? When these banks shall be brought to rely on their own means, their own credit, and their own facilities; when the substantial succor of a universally-accredited paper currency of twenty millions in amount shall be withdrawn,—then the “experiment” will be put on trial.

It is known, Sir, that I am one of those who believe in the impracticability of an exclusive, or of a general, metallic currency. Such a currency is not suited to the age, nor to commercial convenience. The return of the golden age is a dream. There will continue to be banks, and the mass of circulation will be a paper circulation of some kind; and the question is, whether State institutions, associated together as deposit banks, can furnish a sound and universally accredited circulation.

At present, they are not proved capable of any such thing. If a gentleman here wishes to remit money to New England, or to the Ohio River, he certainly does not send bills of the deposit bank of this District. If a single individual has done that, by way of trying the “experiment,” he probably will not repeat the trial; and, at any rate, the example is not generally followed. The deposit banks pay specie, which is, so far, very well; and a person with a check on one of those banks can obtain specie, and with that specie he can obtain bills of the Bank of the United States; and this is the process he will go through, if he wishes to remit money, in the shape of bank-notes, to places at any considerable distance. In fact, this is well known to be the only practice. How this is to be effected, when there shall be no longer notes of the Bank of the United States to be had, remains to be seen.

I have said, Sir, the day of trial has not come, and that all as yet seems clear weather. But I have lately learned that there are symptoms of approaching squalls. Some little specks of cloud, at least, make their appearance above the horizon. I learn, from authority not to be questioned, that, within the last week or ten days, a treasury warrant was drawn on a deposit bank in one of the cities, payable in another city. The bank on which the warrant was drawn offered to pay in a check on a bank in the city where the warrant was payable; and when the check was presented, it was found to be made payable in *current bank-notes*. Here, I think, Sir, there is, as I have said, a small cloud darkening the early dawn of the new golden day of our curren-

cy. Even so soon as the present hour, treasury drafts are thus offered to be paid in current bank-notes. I have very good reason to believe, Sir, that other deposit banks draw their checks in like manner, payable in current bank-notes. And I have called the attention of the Senate to these occurrences, not merely to expose the practice, but to correct it also. I wish to stop it at the threshold, by declaring it illegal; and I have prepared a section, which I trust the Senate will see the importance of inserting in this bill.

On the Loss of the Fortification Bill in 1835*

It is not my purpose, Mr. President, to make any remark on the state of our affairs with France. The time for that discussion has not come, and I wait. We are in daily expectation of a communication from the President, which will give us light; and we are authorized to expect a recommendation by him of such measures as he thinks it may be necessary and proper for Congress to adopt. I do not anticipate him. In this most important and delicate business, it is the proper duty of the executive to go forward, and I, for one, do not intend either to be drawn or driven into the lead. When official information shall be before us, and when measures shall be recommended upon the proper responsibility, I shall endeavor to form the best judgment I can, and shall act according to its dictates.

I rise, now, for another purpose. This resolution has drawn on a debate upon the general conduct of the Senate during the last session of Congress, and especially in regard to the proposed grant of the three millions to the President on the last night of the session. My main object is to tell the story of this transaction, and to exhibit the conduct of the Senate fairly to the public view. I owe this duty to the Senate. I owe it to the committee with which I am connected; and although whatever is personal to an individual is generally of too little importance to be made the subject of much remark, I hope I may be permitted to say a few words in defence of my own reputation, in reference to a matter which has been greatly misrepresented.

This vote for the three millions was proposed by the House

* A Speech delivered in the Senate of the United States, on the 14th of January, 1836, on Mr. Benton's Resolutions for appropriating the Surplus Revenue to National Defence.

of Representatives as an amendment to the fortification bill; and the loss of that bill, three millions and all, is the charge which has been made upon the Senate, sounded over all the land, and now again renewed. I propose to give the true history of this bill, its origin, its progress, and its loss.

Before attempting that, however, let me remark, for it is worthy to be remarked and remembered, that the business brought before the Senate last session, important and various as it was, and both public and private, was all gone through with most uncommon despatch and promptitude. No session has witnessed a more complete clearing off and finishing of the subjects before us. The communications from the other house, whether bills or whatever else, were especially attended to in a proper season, and with that ready respect which is due from one house to the other. I recollect nothing of any importance which came to us from the House of Representatives, which was neglected, overlooked, or disregarded by the Senate.

On the other hand, it was the misfortune of the Senate, and, as I think, the misfortune of the country, that, owing to the state of business in the House of Representatives towards the close of the session, several measures which had been matured in the Senate, and passed into bills, did not receive attention, so as to be either agreed to or rejected, in the other branch of the legislature. They fell, of course, by the termination of the session.

Among these measures may be mentioned the following, viz.:—

THE POST-OFFICE REFORM BILL, which passed the Senate *unanimously*, and of the necessity for which the whole country is certainly now most abundantly satisfied;

THE CUSTOM-HOUSE REGULATIONS BILL, which also passed nearly unanimously, after a very laborious preparation by the Committee on Commerce, and a full discussion in the Senate;

THE JUDICIARY BILL, passed here by a majority of thirty-one to five, and which has again already passed the Senate at this session with only a single dissenting vote;

THE BILL INDEMNIFYING CLAIMANTS FOR FRENCH SPOILIATIONS BEFORE 1800;

THE BILL REGULATING THE DEPOSIT OF THE PUBLIC MONEY IN THE DEPOSIT BANKS;

THE BILL RESPECTING THE TENURE OF CERTAIN OFFICES, AND THE POWER OF REMOVAL FROM OFFICE; which has now again been passed to be engrossed, in the Senate, by a decided majority.

All these important measures, matured and passed in the Senate in the course of the session, and many others of less importance, were sent to the House of Representatives, and we never heard any thing more from them. They there found their graves.

It is worthy of being remarked, also, that the attendance of members of the Senate was remarkably full, particularly toward the end of the session. On the last day, every Senator was in his place till very near the hour of adjournment, as the journal will show. We had no breaking up for want of a quorum; no delay, no calls of the Senate; nothing which was made necessary by the negligence or inattention of the members of this body. On the vote of the three millions of dollars, which was taken at about eight o'clock in the evening, forty-eight votes were given, every member of the Senate being in his place and answering to his name. This is an instance of punctuality, diligence, and labor, continued to the very end of an arduous session, wholly without example or parallel.

The Senate, then, Sir, must stand, in the judgment of every man, fully acquitted of all remissness, all negligence, all inattention, amidst the fatigue and exhaustion of the closing hours of Congress. Nothing passed unheeded, nothing was overlooked, nothing forgotten, and nothing slighted.

And now, Sir, I would proceed immediately to give the history of the fortification bill, if it were not necessary as introductory to that history, and as showing the circumstances under which the Senate was called on to transact the public business, first to refer to another bill which was before us, and to the proceedings which were had upon it.

It is well known, Sir, that the annual appropriation bills always originate in the House of Representatives. This is so much a matter of course, that no one ever looks to see such a bill first brought forward in the Senate. It is also well known, Sir, that it has been usual, heretofore, to make the annual appropriations for the Military Academy at West Point in the general bill which provides for the pay and support of the army. But last year the army bill did not contain any appropriation whatever

for the support of West Point. I took notice of this singular omission when the bill was before the Senate, but presumed, and indeed understood, that the House would send us a separate bill for the Military Academy. The army bill, therefore, passed; but no bill for the Academy at West Point appeared. We waited for it from day to day, and from week to week, but waited in vain. At length, the time for sending bills from one house to the other, according to the joint rules of the two houses, expired, and no bill had made its appearance for the support of the Military Academy. These joint rules, as is well known, are sometimes suspended on the application of one house to the other, in favor of particular bills, whose progress has been unexpectedly delayed, but which the public interest requires to be passed. But the House of Representatives sent us no request to suspend the rules in favor of a bill for the support of the Military Academy, nor made any other proposition to save the institution from immediate dissolution. Notwithstanding all the talk about a war, and the necessity of a vote for the three millions, the Military Academy, an institution cherished so long, and at so much expense, was on the very point of being entirely broken up.

Now it so happened, Sir, that at this time there was another appropriation bill which had come from the House of Representatives, and was before the Committee on Finance here. This bill was entitled "An Act making appropriations for the civil and diplomatic expenses of the government for the year 1835."

In this state of things, several members of the House of Representatives applied to the committee, and besought us to save the Military Academy by annexing the necessary appropriations for its support to the bill for civil and diplomatic service. We spoke to them, in reply, of the unfitness, the irregularity, the incongruity, of this forced union of such dissimilar subjects; but they told us it was a case of absolute necessity, and that, without resorting to this mode, the appropriation could not get through. We acquiesced, Sir, in these suggestions. We went out of our way. We agreed to do an extraordinary and an irregular thing, in order to save the public business from miscarriage. By direction of the committee, I moved the Senate to add an appropriation for the Military Academy to the bill for

defraying civil and diplomatic expenses. The bill was so amended; and in this form the appropriation was finally made.

But this was not all. This bill for the civil and diplomatic service, being thus amended by tacking the Military Academy to it, was sent back by us to the House of Representatives, where its length of tail was to be still much further increased. That house had before it several subjects for provision, and for appropriation, upon which it had not passed any bill before the time for passing bills to be sent to the Senate had elapsed. I was anxious that these things should, in some way, be provided for; and when the diplomatic bill came back, drawing the Military Academy after it, it was thought prudent to attach to it several of these other provisions. There were propositions to pave the streets in the city of Washington, to repair the Capitol, and various other things, which it was necessary to provide for; and they, therefore, were put into the same bill, by way of amendment to an amendment; that is to say, Mr. President, we had been prevailed on to amend their bill for defraying the salary of our ministers abroad, by adding an appropriation for the Military Academy, and they proposed to amend this our amendment, by adding matter as germane to it, as it was itself to the original bill. There was also the President's gardener. His salary was unprovided for; and there was no way of remedying this important omission, but by giving him place in the diplomatic service bill, among *chargés d'affaires*, envoys extraordinary, and ministers plenipotentiary. In and among these ranks, therefore, he was formally introduced by the amendment of the House, and there he now stands, as you will readily see by turning to the law.

Sir, I have not the pleasure to know this useful person; but should I see him, some morning, overlooking the workmen in the lawns, walks, copses, and parterres which adorn the grounds around the President's residence, considering the company into which we have introduced him, I should expect to see, at least, a small diplomatic button on his working jacket.

When these amendments came from the House, and were read at our table, though they caused a smile, they were yet adopted, and the law passed, almost with the rapidity of a comet, and with something like the same length of tail.

Now, Sir, not one of these irregularities or incongruities, no part of this jumbling together of distinct and different subjects, was in the slightest degree occasioned by any thing done, or omitted to be done, on the part of the Senate. Their proceedings were all regular; their decision was prompt, their despatch of the public business correct and reasonable. There was nothing of disorganization, nothing of procrastination, nothing evincive of a temper to embarrass or obstruct the public business. If the history which I have now truly given shows that one thing was amended by another, which had no sort of connection with it; that unusual expedients were resorted to; and that the laws, instead of arrangement and symmetry, exhibit anomaly, confusion, and the most grotesque associations, it is nevertheless true, that no part of all this was made necessary by us. We deviated from the accustomed modes of legislation only when we were supplicated to do so, in order to supply bald and glaring deficiencies in measures which were before us.

But now, Mr. President, let me come to the fortification bill, the lost bill, which not only now, but on a graver occasion, has been lamented like the lost Pleiad.

This bill, Sir, came from the House of Representatives to the Senate in the usual way, and was referred to the Committee on Finance. Its appropriations were not large. Indeed, they appeared to the committee to be quite too small. It struck a majority of the committee at once, that there were several fortifications on the coast, either not provided for at all, or not adequately provided for, by this bill. The whole amount of its appropriations was four hundred or four hundred and thirty thousand dollars. It contained no grant of three millions, and if the Senate had passed it the very day it came from the House, not only would there have been no appropriation of the three millions, but, Sir, none of these other sums which the Senate did insert in the bill. Others besides ourselves saw the deficiencies of this bill. We had communications with and from the departments, and we inserted in the bill every thing which any department recommended to us. We took care to be sure that nothing else was coming. And we then reported the bill to the Senate with our proposed amendments. Among these amendments, there was a sum of \$ 75,000 for Castle Island, in Boston harbor, \$ 100,000 for defences in Maryland, and so forth. These

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amendments were agreed to by the Senate, and one or two others added, on the motion of members; and the bill, as thus amended, was returned to the House.

And now, Sir, it becomes important to ask, When was this bill, thus amended, returned to the House of Representatives? Was it unduly detained here, so that the House was obliged afterwards to act upon it suddenly? This question is material to be asked, and material to be answered, too, and the journal does satisfactorily answer it; for it appears by the journal that the bill was returned to the House of Representatives on Tuesday, the 24th of February, *one whole week before the close of the session*. And from Tuesday, the 24th of February, to Tuesday, the 3d day of March, we heard not one word from this bill. Tuesday, the 3d day of March, was, of course, the last day of the session. We assembled here at ten or eleven o'clock in the morning of that day, and sat until three in the afternoon, and still we were not informed whether the House had finally passed the bill. As it was an important matter, and belonged to that part of the public business which usually receives particular attention from the Committee on Finance, I bore the subject in my mind, and felt some solicitude about it, seeing that the session was drawing so near to a close. I took it for granted, however, as I had not heard any thing to the contrary, that the amendments of the Senate would not be objected to, and that, when a convenient time should arrive for taking up the bill in the House, it would be passed at once into a law, and we should hear no more about it. Not the slightest intimation was given, either that the executive wished for any larger appropriation, or that it was intended in the House to insert such larger appropriation. Not a syllable escaped from any body, and came to our knowledge, that any further alteration whatever was intended in the bill.

At three o'clock in the afternoon of the 3d of March, the Senate took its recess, as is usual in that period of the session, until five o'clock. At five o'clock we again assembled, and proceeded with the business of the Senate until eight o'clock in the evening; and at eight o'clock in the evening, and not before, the clerk of the House appeared at our door, and announced that the House of Representatives had *disagreed* to one of the Senate's amendments, *agreed* to others; and to two of those amendments,

namely, the fourth and fifth, it had agreed, *with an amendment of its own*.

Now, Sir, these fourth and fifth amendments of ours were, one, a vote of \$ 75,000 for Castle Island in Boston harbor, and the other, a vote of \$ 100,000 for certain defences in Maryland. And what, Sir, was the addition which the House of Representatives proposed to make, by way of "*amendment*" to a vote of \$ 75,000 for repairing the works in Boston harbor? Here, Sir, it is:—

"*And be it further enacted*, That the sum of three millions of dollars be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, to be expended, in whole or in part, under the direction of the President of the United States, for the military and naval service, including fortifications and ordnance, and the increase of the navy: *Provided*, such expenditures shall be rendered necessary for the defence of the country prior to the next meeting of Congress."

This proposition, Sir, was thus unexpectedly and suddenly put to us, at eight o'clock in the evening of the last day of the session. Unusual, unprecedented, extraordinary, as it obviously is, on the face of it, the manner of presenting it was still more extraordinary. The President had asked for no such grant of money; no department had recommended it; no estimate had suggested it; no reason whatever was given for it. No emergency had happened, and nothing new had occurred; every thing known to the administration, at that hour, respecting our foreign relations, had certainly been known to it for days and weeks.

With what propriety, then, could the Senate be called on to sanction a proceeding so entirely irregular and anomalous? Sir, I recollect the occurrences of the moment very well, and I remember the impression which this vote of the House seemed to make all round the Senate. We had just come out of executive session; the doors were but just opened; and I hardly remember that there was a single spectator in the hall or the galleries. I had been at the clerk's table, and had not reached my seat, when the message was read. All the Senators were in the chamber. I heard the message, certainly with great surprise and astonishment; and I immediately moved the Senate to *disagree*

to this vote of the House. My relation to the subject, in consequence of my connection with the Committee on Finance, made it my duty to propose some course, and I had not a moment's doubt or hesitation what that course ought to be. I took upon myself, then, Sir, the responsibility of moving that the Senate should disagree to this vote, and I now acknowledge that responsibility. It might be presumptuous to say that I took a leading part, but I certainly took an early part, a decided part, and an earnest part, in rejecting this broad grant of three millions of dollars, without limitation of purpose or specification of object, called for by no recommendation, founded on no estimate, made necessary by no state of things which was known to us. Certainly, Sir, I took a part in its rejection; and I stand here, in my place in the Senate, to-day, ready to defend the part so taken by me; or, rather, Sir, I disclaim all defence, and all occasion of defence, and I assert it as meritorious to have been among those who arrested, at the earliest moment, this extraordinary departure from all settled usage, and, as I think, from plain constitutional injunction; this indefinite voting of a vast sum of money to mere executive discretion, without limit assigned, without object specified, without reason given, and without the least control.

Sir, I am told, that, in opposing this grant, I spoke with warmth, and I suppose I may have done so. If I did, it was a warmth springing from as honest a conviction of duty as ever influenced a public man. It was spontaneous, unaffected, sincere. There had been among us, Sir, no consultation, no concert. There could have been none. Between the reading of the message and my motion to disagree, there was not time enough for any two members of the Senate to exchange five words on the subject. The proposition was sudden and perfectly unexpected. I resisted it, as irregular, as dangerous in itself, and dangerous in its precedent; as wholly unnecessary, and as violating the plain intention, if not the express words, of the Constitution. Before the Senate, then, I avowed, and before the country I now avow, my part in this opposition. Whatsoever is to fall on those who sanctioned it, of that let me have my full share.

The Senate, Sir, rejected this grant by a vote of TWENTY-NINE against nineteen. Those twenty-nine names are on the journal;

and whensoever the EXPUNGING process may commence, or how far soever it may be carried, I pray it, in mercy, not to erase mine from that record. I beseech it, in its sparing goodness, to leave me that proof of attachment to duty and to principle. It may draw around it, over it, or through it, black lines, or red lines, or any lines; it may mark it in any way which either the most prostrate and fantastical spirit of *man-worship*, or the most ingenious and elaborate study of self-degradation, may devise, if only it will leave it so that those who inherit my blood, or who may hereafter care for my reputation, shall be able to behold it where it now stands.

The House, Sir, insisted on this amendment. The Senate adhered to its disagreement; the House asked a conference, to which request the Senate immediately acceded. The committee of conference met, and in a very short time came to an agreement. They agreed to recommend to their respective houses, as a substitute for the vote proposed by the House, the following:—

“As an additional appropriation for arming the fortifications of the United States, three hundred thousand dollars.”

“As an additional appropriation for the repairs and equipment of ships of war of the United States, five hundred thousand dollars.”

I immediately reported this agreement of the committee of conference to the Senate; but, inasmuch as the bill was in the House of Representatives, the Senate could not act further on the matter until the House should first have considered the report of the committee, decided thereon, and sent us the bill. I did not myself take any note of the particular hour of this part of the transaction. The honorable member from Virginia* says he looked at his watch at the time, and he knows that I had come from the conference, and was in my seat, at a quarter past eleven. I have no reason to think that he is under any mistake on this particular. He says it so happened that he had occasion to take notice of the hour, and well remembers it. It could not well have been later than this, as any one will be satisfied who will look at our journals, public and executive, and see what a mass of business was despatched after I came from the commit-

* Mr. Leigh.

tee, and before the adjournment of the Senate. Having made the report, Sir, I had no doubt that both houses would concur in the result of the conference, and looked every moment for the officer of the House bringing the bill. He did not come, however, and I pretty soon learned that there was doubt whether the committee on the part of the House would report to the House the agreement of the conferees. At first, I did not at all credit this; but was confirmed by one communication after another, until I was obliged to think it true. Seeing that the bill was thus in danger of being lost, and intending at any rate that no blame should justly attach to the Senate, I immediately moved the following resolution:—

“*Resolved*, That a message be sent to the honorable the House of Representatives, respectfully to remind the House of the report of the committee of conference appointed on the disagreeing votes of the two houses on the amendment of the House to the amendment of the Senate to the bill respecting the fortifications of the United States.”

You recollect this resolution, Sir, having, as I well remember, taken some part on the occasion.*

This resolution was promptly passed; the secretary carried it to the House, and delivered it. What was done in the House on the receipt of this message now appears from the printed journal. I have no wish to comment on the proceedings there recorded; all may read them, and each be able to form his own opinion. Suffice it to say, that the House of Representatives, having then possession of the bill, chose to retain that possession, and never acted on the report of the committee of conference. The bill, therefore, was lost. It was lost in the House of Representatives. It died there, and there its remains are to be found. No opportunity was given to the members of the House to decide whether they would agree to the report of the committee or not. From a quarter past eleven, when the report was agreed to, until two or three o'clock in the morning, the House remained in session. If at any time there was not a quorum of members present, the attendance of a quorum, we are to presume, might have been commanded, as there was undoubtedly a great majority of members still in the city.

* Mr King, of Alabama, was in the chair.

But, Sir, there is one other transaction of the evening which I now feel bound to state, because I think it quite important, on several accounts, that it should be known.

A nomination was pending before the Senate for a judge of the Supreme Court. In the course of the sitting, that nomination was called up, and, on motion, was indefinitely postponed. In other words, it was rejected; for an indefinite postponement is a rejection. The office, of course, remained vacant, and the nomination of another person to fill it became necessary. The President of the United States was then in the Capitol, as is usual on the evening of the last day of the session, in the chamber assigned to him, and with the heads of departments around him. When nominations are rejected under these circumstances, it has been usual for the President immediately to transmit a new nomination to the Senate; otherwise the office must remain vacant till the next session, as the vacancy in such case has not happened in the recess of Congress. The vote of the Senate, indefinitely postponing this nomination, was carried to the President's room by the secretary of the Senate. The President told the secretary that it was more than an hour past twelve o'clock, and that he could receive no further communications from the Senate, and immediately after, as I have understood, left the Capitol. The secretary brought back the paper containing the certified copy of the vote of the Senate, and indorsed thereon the substance of the President's answer, and also added, that, according to his own watch, it was quarter past one o'clock.

There are two views, Sir, in which this occurrence may well deserve to be noticed. One is as to the connection which it may perhaps have had with the loss of the fortification bill; the other is as to its general importance, as introducing a new rule, or a new practice, respecting the intercourse between the President and the two houses of Congress on the last day of the session.

On the first point, I shall only observe that the fact of the President's having declined to receive this communication from the Senate, and of his having left the Capitol, was immediately known in the House of Representatives. It was quite obvious, that, if he could not receive a communication from the Senate, neither could he receive a bill from the House of Representatives for his signature. It was equally obvious, that, if,

Andrew Jackson

From a Photograph



A. W. Eliott & Co. Boston

under these circumstances, the House of Representatives should agree to the report of the committee of conference, so that the bill should pass, it must, nevertheless, fail to become a law for want of the President's signature; and that, in that case, the blame of losing the bill, on whomsoever else it might fall, could not be laid upon the Senate.

On the more general point, I must say, Sir, that this decision of the President, not to hold communication with the houses of Congress after twelve o'clock at night, on the 3d of March, is quite new. No such objection has ever been made before by any President. No one of them has ever declined communicating with either house at any time during the continuance of its session on that day. All Presidents heretofore have left with the houses themselves to fix their hour of adjournment, and to bring their session for the day to a close, whenever they saw fit.

It is notorious, in point of fact, that nothing is more common than for both houses to sit later than twelve o'clock, for the purpose of completing measures which are in the last stages of their progress. Amendments are proposed and agreed to, bills passed, enrolled bills signed by the presiding officers, and other important legislative acts performed, often at two or three o'clock in the morning. All this is very well known to gentlemen who have been for any considerable time members of Congress. And all Presidents have signed bills, and have also made nominations to the Senate, without objection as to time, whenever bills have been presented for signature, or whenever it became necessary to make nominations to the Senate, at any time during the session of the respective houses on that day.

And all this, Sir, I suppose to be perfectly right, correct, and legal. There is no clause of the Constitution, nor is there any law, which declares that the term of office of members of the House of Representatives shall expire at twelve o'clock at night on the 3d of March. They are to hold for two years, but the precise hour for the commencement of that term of two years is nowhere fixed by constitutional or legal provision. It has been established by usage and by inference, and very properly established, that, since the first Congress commenced its existence on the first Wednesday in March, 1789, which happened to be the fourth day of the month, therefore the 4th of March is the day of the commencement of each successive term; but no hour

is fixed by law or practice. The true rule is, as I think, most undoubtedly, that the session held on the last day constitutes the last day for all legislative and legal purposes. While the session begun on that day continues, the day itself continues, according to the established practice both of legislative and judicial bodies. This could not well be otherwise. If the precise moment of actual time were to settle such a matter, it would be material to ask, Who shall settle the time? Shall it be done by public authority, or shall every man observe the tick of his own watch? If absolute time is to furnish a precise rule, the excess of a minute, it is obvious, would be as fatal as the excess of an hour. Sir, no bodies, judicial or legislative, have ever been so hypercritical, so astute to no purpose, so much more nice than wise, as to govern themselves by any such ideas. The session for the day, at whatever hour it commences, or at whatever hour it breaks up, is the legislative day. Every thing has reference to the commencement of that diurnal session. For instance, this is the 14th day of January; we assembled here to-day at twelve o'clock; our journal is dated January 14th, and if we should remain here until five o'clock to-morrow morning (and the Senate has sometimes sat so late), our proceedings would still bear date of the 14th of January; they would be so stated upon the journal, and the journal is a record, and is a conclusive record, so far as respects the proceedings of the body.

It is so in judicial proceedings. If a man were on trial for his life, at a late hour on the last day allowed by law for the holding of the court, and the jury should acquit him, but happened to remain so long in deliberation that they did not bring in their verdict till after twelve o'clock, is it all to be held for naught, and the man to be tried over again? Are all verdicts, judgments, and orders of courts null and void, if made after midnight on the day which the law prescribes as the last day? It would be easy to show by authority, if authority could be wanted for a thing the reason of which is so clear, that the day lasts while the daily session lasts. When the court or the legislative body adjourns for that day, the day is over, and not before.

I am told, indeed, Sir, that it is true that, on this same 3d day of March last, not only were other things transacted, but that the bill for the repair of the Cumberland Road, an important and much litigated measure, actually received the signature of our

presiding officer after twelve o'clock, was then sent to the President, and signed by him. I do not affirm this, because I took no notice of the time, or do not remember it if I did; but I have heard the matter so stated.

I see no reason, Sir, for the introduction of this new practice; no principle on which it can be justified, no necessity for it, no propriety in it. As yet, it has been applied only to the President's intercourse with the Senate. Certainly it is equally applicable to his intercourse with both houses in legislative matters; and if it is to prevail hereafter, it is of much importance that it should be known.

The President of the United States, Sir, has alluded to this loss of the fortification bill in his message at the opening of the session, and he has alluded, also, in the same message, to the rejection of the vote of the three millions. On the first point, that is, the loss of the whole bill, and the causes of that loss, this is his language: "Much loss and inconvenience have been experienced in consequence of the failure of the bill containing the ordinary appropriations for fortifications, which passed one branch of the national legislature at the last session, but was lost in the other."

If the President intended to say that the bill, having originated in the House of Representatives, passed the Senate, and was yet afterwards lost in the House of Representatives, he was entirely correct. But he has been wholly misinformed, if he intended to state that the bill, having passed the House, was lost in the Senate. As I have already stated, the bill was lost in the House of Representatives. It drew its last breath there. That House never let go its hold on it after the report of the committee of conference. But it held it, it retained it, and of course it died in its possession when the House adjourned. It is to be regretted that the President should have been misinformed in a matter of this kind, when the slightest reference to the journals of the two houses would have exhibited the correct history of the transaction.

I recur again, Mr. President, to the proposed grant of the three millions, for the purpose of stating somewhat more distinctly the true grounds of objection to that grant.

These grounds of objection were two; the first was, that no such appropriation had been recommended by the President, or

any of the departments. And what made this ground the stronger was, that the proposed grant was defended, so far as it was defended at all, upon an alleged necessity, growing out of our foreign relations. The foreign relations of the country are intrusted by the Constitution to the lead and management of the executive government. The President not only is supposed to be, but usually is, much better informed on these interesting subjects than the houses of Congress. If there be danger of a rupture with a foreign state, he sees it soonest. All our ministers and agents abroad are but so many eyes, and ears, and organs to communicate to him whatsoever occurs in foreign places, and to keep him well advised of all which may concern the interests of the United States. There is an especial propriety, therefore, that, in this branch of the public service, Congress should always be able to avail itself of the distinct opinions and recommendations of the President. The two houses, and especially the House of Representatives, are the natural guardians of the people's money. They are to keep it sacred, and to use it discreetly. They are not at liberty to spend it where it is not needed, nor to offer it for any purpose till a reasonable occasion for the expenditure be shown. Now, in this case, I repeat again, the President had sent us no recommendation for any such appropriation; no department had recommended it; no estimate had contained it; in the whole history of the session, from the morning of the first day, down to eight o'clock in the evening of the last day, not one syllable had been said to us, not one hint suggested, showing that the President deemed any such measure either necessary or proper. I state this strongly, Sir, but I state it truly. I state the matter as it is; and I wish to draw the attention of the Senate and of the country strongly to this part of the case. I say again, therefore, that, when this vote for the three millions was proposed to the Senate, there was nothing before us showing that the President recommended any such appropriation. You very well know, Sir, that this objection was stated as soon as the message from the House was read. We all well remember that this was the very point put forth by the honorable member from Tennessee,* as being, if I may say so, the butt-end of his argument in opposition to

* Mr. White.

the vote. He said, very significantly, and very forcibly, "It is not asked for by those who best know what the public service requires; how, then, are we to presume that it is needed?" This question, Sir, was not answered then; it never has been answered since; it never can be answered satisfactorily.

But let me here again, Sir, recur to the message of the President. Speaking of the loss of the bill, he uses these words: "This failure was the more regretted, not only because it necessarily interrupted and delayed the progress of a system of national defence projected immediately after the last war, and since steadily pursued, but also because it contained a contingent appropriation, inserted in accordance with the views of the executive, in aid of this important object, and other branches of the national defence, some portions of which might have been most usefully applied during the past season."

Taking these words of the message, Sir, and connecting them with the fact that the President had made no recommendation to Congress of any such appropriation, it strikes me that they furnish matter for very grave reflection. The President says that this proposed appropriation was "in accordance with the views of the executive"; that it was "in aid of an important object"; and that "some portions of it might have been most usefully applied during the past season."

And now, Sir, I ask, if this be so, why was not this appropriation recommended to Congress by the President? I ask this question in the name of the Constitution of the United States; I stand on its own clear authority in asking it; and I invite all those who remember its injunctions, and who mean to respect them, to consider well how the question is to be answered.

Sir, the Constitution is not yet an entire dead letter. There is yet some form of observance of its requirements; and even while any degree of formal respect is paid to it, I must be permitted to continue the question, Why was not this appropriation recommended? It was in accordance with the President's views; it was for an important object; it might have been usefully expended. The President being of opinion, therefore, that the appropriation was necessary and proper, how is it that it was not recommended to Congress? For, Sir, we all know the plain and direct words in which the very first duty

of the President is imposed by the Constitution. Here they are:—

“He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient.”

After enumerating the *powers* of the President, this is the first, the very first *duty* which the Constitution gravely enjoins upon him. And now, Sir, in no language of taunt or reproach, in no language of party attack, in terms of no asperity or exaggeration, but called upon by the necessity of defending my own vote upon the subject, as a public man, as a member of Congress here in my place, and as a citizen who feels as warm an attachment to the Constitution of the country as any other can, I demand of any who may choose to give it an answer to this question: WHY WAS NOT THIS MEASURE, WHICH THE PRESIDENT DECLARES THAT HE THOUGHT NECESSARY AND EXPEDIENT, RECOMMENDED TO CONGRESS? And why am I, and why are other members of Congress, whose path of duty the Constitution says shall be enlightened by the President's opinions and communications, to be charged with want of patriotism and want of fidelity to the country, because we refused an appropriation which the President, though it was in accordance with his views, and though he believed it important, would not, and did not, recommend to us? When these questions are answered to the satisfaction of intelligent and impartial men, then, and not till then, let reproach, let censure, let suspicion of any kind, rest on the twenty-nine names which stand opposed to this appropriation.

How, Sir, were we to know that this appropriation “was in accordance with the views of the executive”? He had not so told us, formally or informally. He had not only not recommended it to Congress, or either house of Congress, but nobody on this floor had undertaken to speak in his behalf. No man got up to say, “The President desires it; he thinks it necessary, expedient, and proper.” But, Sir, if any gentleman had risen to say this, it would not have answered the requisition of the Constitution. Not at all. It is not by a hint, an intimation, the suggestion of a friend, that the executive duty in this respect is to be fulfilled By no means. The President is to make a recommendation; a public recommendation, an official recom-

mentation, a responsible recommendation, not to one house, but to both houses; it is to be a recommendation to Congress. If, on receiving such recommendation, Congress fail to pay it proper respect, the fault is theirs. If, deeming the measure necessary and expedient, the President fails to recommend it, the fault is his, clearly, distinctly, and exclusively his. This, Sir, is the Constitution of the United States, or else I do not understand the Constitution of the United States.

Does not every man see how entirely unconstitutional it is that the President should communicate his opinions or wishes to Congress, on such grave and important subjects, otherwise than by a direct and responsible recommendation, a public and open recommendation, equally addressed and equally known to all whose duty calls upon them to act on the subject? What would be the state of things, if he might communicate his wishes or opinions privately to members of one house, and make no such communication to the other? Would not the two houses be necessarily put in immediate collision? Would they stand on equal footing? Would they have equal information? What could ensue from such a manner of conducting the public business, but quarrel, confusion, and conflict? A member rises in the House of Representatives, and moves a very large appropriation of money for military purposes. If he says he does it upon executive recommendation, where is his voucher? The President is not like the British king, whose ministers and secretaries are in the House of Commons, and who are authorized, in certain cases, to express the opinions and wishes of their sovereign. We have no king's servants; at least, we have none known to the Constitution. Congress can know the opinions of the President only as he officially communicates them. It would be a curious inquiry in either house, when a large appropriation is moved, if it were necessary to ask whether the mover represented the President, spoke his sentiments, or, in other words, whether what he proposed were "in accordance with the views of the executive." How could that be judged of? By the party he belongs to? Party is not quite strongly enough marked for that. By the airs he gives himself? Many might assume airs, if thereby they could give themselves such importance as to be esteemed authentic expositors of the executive will. Or is this will to be circulated in whispers; made known

to the meetings of party men; intimated through the press; or communicated in any other form, which still leaves the executive completely irresponsible; so that, while executive purposes or wishes pervade the ranks of party friends, influence their conduct, and unite their efforts, the open, direct, and constitutional responsibility is wholly avoided? Sir, this is not the Constitution of the United States, nor can it be consistent with any constitution which professes to maintain separate departments in the government.

Here, then, Sir, is abundant ground, in my judgment, for the vote of the Senate, and here I might rest it. But there is also another ground. The Constitution declares that no money shall be drawn from the treasury but in consequence of appropriations made by law. What is meant by "*appropriations*"? Does not this language mean that particular sums shall be assigned by law to particular objects? How far this pointing out and fixing the particular objects shall be carried, is a question that cannot be settled by any precise rule. But "*specific appropriation*," that is to say, the designation of every object for which money is voted, as far as such designation is practicable, has been thought to be a most important republican principle. In times past, popular parties have claimed great merit from professing to carry this doctrine much farther, and to adhere to it much more strictly, than their adversaries. Mr. Jefferson, especially, was a great advocate for it, and held it to be indispensable to a safe and economical administration and disbursement of the public revenues.

But what have the friends and admirers of Mr. Jefferson to say to this *appropriation*? Where do they find, in this proposed grant of three millions, a constitutional designation of object, and a particular and specific application of money? Have they forgotten, all forgotten, and wholly abandoned even all pretence for specific appropriation? If not, how could they sanction such a vote as this? Let me recall its terms. They are, that "the sum of three millions of dollars be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, to be expended, in whole or in part, under the direction of the President of the United States, for the military and naval service, including fortifications and ordnance, and the increase of the navy; provided such expenditures shall be rendered neces-

sary for the defence of the country prior to the next meeting of Congress."

In the first place it is to be observed, that whether the money shall be used at all, or not, is made to depend on the discretion of the President. This is sufficiently liberal. It carries confidence far enough. But if there had been no other objections, if the objects of the appropriation had been sufficiently described, so that the President, if he expended the money at all, must expend it for purposes authorized by the legislature, and nothing had been left to his discretion but the question whether an emergency had arisen in which the authority ought to be exercised, I might not have felt bound to reject the vote. There are some precedents which might favor such a contingent provision, though the practice is dangerous, and ought not to be followed except in cases of clear necessity.

But the insurmountable objection to the proposed grant was, that it specified no objects. It was as general as language could make it. It embraced every expenditure that could be called either military or naval. It was to include "fortifications, ordnance, and the increase of the navy," but it was not confined to these. It embraced the whole general subject of military service. Under the authority of such a law, the President might repair ships, build ships, buy ships, enlist seamen, and do any thing and every thing else touching the naval service, without restraint or control.

He might repair such fortifications as he saw fit, and neglect the rest; arm such as he saw fit, and neglect the arming of others; or build new fortifications wherever he chose. But these unlimited powers over the fortifications and the navy constitute by no means the most dangerous part of the proposed authority; because, under that authority, his power to raise and employ land forces would be equally absolute and uncontrolled. He might levy troops, embody a new army, call out the militia in numbers to suit his own discretion, and employ them as he saw fit.

Now, Sir, does our legislation, under the Constitution, furnish any precedent for all this?

We make appropriations for the army, and we understand what we are doing, because it is "the army," that is to say, the army established by law. We make appropriations for the

navy; they, too, are for "the navy," as provided for and established by law. We make appropriations for fortifications, but we say what fortifications, and we assign to each its intended amount of the whole sum. This is the usual course of Congress on such subjects; and why should it be departed from? Are we ready to say that the power of fixing the places for new fortifications, and the sum allotted to each; the power of ordering new ships to be built, and fixing the number of such new ships; the power of laying out money to raise men for the army; in short, every power, great or small, respecting the military and naval service, shall be vested in the President, without specification of object or purpose, to the entire exclusion of the exercise of all judgment on the part of Congress? For one, I am not prepared. The honorable member from Ohio, near me, has said, that if the enemy had been on our shores he would not have agreed to this vote. And I say, if the proposition were now before us, and the guns of the enemy were pointed against the walls of the Capitol, I would not agree to it.

The people of this country have an interest, a property, an inheritance, in this INSTRUMENT, against the value of which forty capitolis do not weigh the twentieth part of one poor scruple. There can never be any necessity for such proceedings but a feigned and false necessity; a mere idle and hollow pretence of necessity; least of all can it be said that any such necessity actually existed on the 3d of March. There was no enemy on our shores; there were no guns pointed against the Capitol; we were in no war, nor was there a reasonable probability that we should have war, unless we made it ourselves.

But whatever was the state of our foreign relations, is it not preposterous to say, that it was necessary for Congress to adopt this measure, and yet not necessary for the President to recommend it? Why should we thus run in advance of all our own duties, and leave the President completely shielded from his just responsibility? Why should there be nothing but trust and confidence on our side, and nothing but discretion and power on his?

Sir, if there be any philosophy in history, if human blood still runs in human veins, if man still conforms to the identity of his nature, the institutions which secure constitutional liberty can never stand long against this excessive personal confidence,

against this devotion to men, in utter disregard both of principle and experience, which seem to me to be strongly characteristic of our times. This vote came to us, Sir, from the popular branch of the legislature; and that such a vote should come from such a branch of the legislature was amongst the circumstances which excited in me the greatest surprise and the deepest concern. Certainly, Sir, certainly I was not, on that account, the more inclined to concur. It was no argument with me, that others seemed to be rushing, with such heedless, headlong trust, such impetuosity of confidence, into the arms of executive power. I held back the more strongly, and would hold back the longer. I see, or I think I see,—it is either a true vision of the future, revealed by the history of the past, or, if it be an illusion, it is an illusion which appears to me in all the brightness and sunlight of broad noon,—that it is in this career of personal confidence, along this beaten track of *man-worship*, marked at every stage by the fragments of other free governments, that our own system is making progress to its close. A personal popularity, honorably earned at first by military achievements, and sustained now by party, by patronage, and by enthusiasm which looks for no ill, because it means no ill itself, seems to render men willing to gratify power, even before its demands are made, and to surfeit executive discretion, even in anticipation of its own appetite.

If, Sir, on the 3d of March last, it had been the purpose of both houses of Congress to create a military dictator, what formula had been better suited to their purpose than this vote of the House? It is true, we might have given more money, if we had had it to give. We might have emptied the treasury; but as to the *form* of the gift, we could not have bettered it. Rome had no better models. When we give our money *for any military purpose whatever*, what remains to be done? If we leave it with one man to decide, not only whether the military means of the country shall be used at all, but how they shall be used, and to what extent they shall be employed, what remains either for Congress or the people but to sit still and see how this dictatorial power will be exercised? On the 3d of March, Sir, I had not forgotten, it was impossible that I should have forgotten, the recommendation in the message at the opening of that session, that power should be vested in the President to issue let-

ters of marque and reprisal against France, at his discretion, in the recess of Congress. Happily, this power was not granted; but suppose it had been, what would then have been the true condition of this government? Why, Sir, this condition is very shortly described. The whole war power would have been in the hands of the President; for no man can doubt a moment that reprisals would bring on immediate war; and the treasury, to the amount of this vote, in addition to all ordinary appropriations, would have been at his absolute disposal also. And all this in a time of peace. I beseech all true lovers of constitutional liberty to contemplate this state of things, and tell me whether such be a truly republican administration of this government. Whether particular consequences had ensued or not, is such an accumulation of power in the hands of the executive according to the spirit of our system? Is it either wise or safe? Has it any warrant in the practice of former times? Or are gentlemen ready to establish the practice, as an example for the benefit of those who are to come after us?

But, Sir, if the power to make reprisals, and this money from the treasury, had both been granted, is there not great reason to believe that we should have been now actually at war? I think there is great reason to believe this. It will be said, I know, that if we had armed the President with this power of war, and supplied him with this grant of money, France would have taken it for such a proof of spirit on our part, that she would have paid the indemnity without further delay. This is the old story, and the old plea. It is the excuse of every one who desires more power than the Constitution or the laws give him, that if he had more power he could do more good. Power is always claimed for the good of the people; and dictators are always made, when made at all, for the good of the people. For my part, Sir, I was content, and am content, to show France that we are prepared to maintain our just rights against her by the exertion of our power, when need be, according to the forms of our own Constitution; that, if we make war, we will make it constitutionally; and that we will trust all our interests, both in peace and war, to what the intelligence and the strength of the country may do for them, without breaking down or endangering the fabric of our free institutions.

Mr. President, it is the misfortune of the Senate to have dif-

ferred with the executive on many great questions during the last four or five years. I have regretted this state of things deeply, both on personal and on public accounts; but it has been unavoidable. It is no pleasant employment, it is no holiday business, to maintain opposition against power and against majorities, and to contend for stern and sturdy principle, against personal popularity, against a rushing and overwhelming confidence, that, by wave upon wave and cataract after cataract, seems to be bearing away and destroying whatsoever would withstand it. How much longer we may be able to support this opposition in any degree, or whether we can possibly hold out till the public intelligence and the public patriotism shall be awakened to a due sense of the public danger, it is not for me to foretell. I shall not despair to the last, if, in the mean time, we are true to our own principles. If there be a steadfast adherence to these principles, both here and elsewhere, if, one and all, they continue the rule of our conduct in the Senate, and the rallying-point of those who think with us and support us out of the Senate, I am content to hope on and to struggle on. While it remains a contest for the preservation of the Constitution, for the security of public liberty, for the ascendancy of principles over men, I am willing to bear my part of it. If we can maintain the Constitution, if we can preserve this security for liberty, if we can thus give to true principle its just superiority over party, over persons, over names, our labors will be richly rewarded. If we fail in all this, they are already among the living who will write the history of this government, from its commencement to its close.

Slavery and the Slave Trade in the District of Columbia*

AGREEABLY to notice, I offer sundry petitions on the subject of slavery and the slave trade in the District of Columbia. The first purports to be signed by two thousand four hundred and twenty-five of the female inhabitants of Boston. This petition is in the usual printed form. It is respectful to Congress, and contains no reproaches against any body. It asks for the consideration of Congress with respect both to the existence of slavery and the slave trade in the District of Columbia.

The second is a petition signed by Joseph Filson, and about a hundred others, citizens of Boston, some of whom are known to me, and are highly respectable persons. The petition is to the same effect, and in the same form.

The third petition appears to be signed by a large number of persons, inhabitants of Wayne County, in Michigan. I am not acquainted with them. It is a printed petition, different in form from the preceding, drawn more at length, and going farther into the subject. I perceive nothing in it disrespectful to the Senate, or reproachful to others.

The fourth petition is like the first two in substance and in form. It is signed by four hundred and thirty-three citizens of Boston. Among these signers, Sir, I recognize the names of many persons well known to me as gentlemen of great worth and respectability. There are clergymen, lawyers, merchants, literary men, manufacturers, and indeed persons from all classes of society.

I ask, Sir, that these petitions may be received, and I move

* Remarks made in the Senate of the United States, on the 16th of March, 1836, on presenting sundry Abolition Petitions.

that they be referred to the Committee on the District of Columbia. This motion itself, Sir, sufficiently shows in what manner I think this subject ought to be treated in the Senate.

The petitioners ask Congress to consider the propriety and expediency of two things; first, of making provision for the extinction of slavery in the District; second, of abolishing or restraining the trade in slaves within the District. Similar petitions have already been received by the Senate. Those gentlemen who think Congress have no power over any part of the subject, if they are clear and settled in that opinion, were perfectly justifiable in voting not to receive them. Any petition which, in our opinion, asks us to do that which is plainly against the Constitution, we might very justly reject. If persons, for instance, should petition us to pass a law abridging the freedom of the press, or respecting an establishment of religion, such petition would very properly be denied any reception at all.

In doubtful cases, we should incline to receive and consider; because doubtful cases ought not to be decided without consideration. But I cannot regard this case as a doubtful one. I think the constitutional power of Congress over the subject is clear, and therefore that we were bound to receive the petitions. And a large majority of the Senate are also of opinion, that petitions of this kind ought to be received.

I have often, Mr. President, expressed the opinion, that over slavery, as it exists in the States, this government has no control whatever. It is entirely and exclusively a State concern. And while it is thus clear that Congress has no direct power over the subject, it is our duty to take care that the authority of this government is not brought to bear upon it by any indirect interference whatever. It must be left to the States, to the course of things, and to those causes over which this government has no control. All this, in my opinion, is in the clear line of our duty.

On the other hand, believing that Congress has constitutional power over slavery, and the trade in slaves, within the District, I think petitions on those subjects, respectfully presented, ought to be respectfully viewed, and respectfully considered. The respectful mode, the proper mode, is the ordinary mode. We have a committee on the affairs of the District. For very obvious reasons, and without any reference to this question, this

committee is ordinarily composed principally of Southern gentlemen. For many years a member from Virginia or Maryland has, I believe, been at the head of the committee. The committee, therefore, is the appropriate one, and there can be no possible objection to it on account of the manner in which it is constituted.

Now I believe, Sir, that the unanimous opinion of the North is, that Congress has no authority over slavery in the States; and it is perhaps equally unanimous in the opinion, that over slavery in the District it has such rightful authority.

Then, Sir, the question is a question of the fitness, propriety, justice, and expediency of considering these two subjects, or either of them, according to the prayer of these petitions.

It is well known to us and to the country, that Congress has hitherto entertained inquiries on both these points. On the 9th of January, 1809, the House of Representatives resolved, by very large majorities, "That the Committee on the District of Columbia be instructed to take into consideration the laws within the District in respect to slavery; that they inquire into the slave trade as it exists in, and is carried on through, the District; and that they report to the House such amendments to the existing laws as shall seem to them to be just."

It resolved also, "That the committee be further instructed to inquire into the expediency of providing by law for the gradual abolition of slavery within the District, in such manner that the interest of no individual shall be injured thereby."

As early as March, 1816, the same House, on the motion of Mr. Randolph, of Virginia, resolved, "That a committee be appointed to inquire into the existence of an inhuman and illegal traffic of slaves carried on in and through the District of Columbia, and to report whether any, and what, measures are necessary for putting a stop to the same."

It is known, also, Sir, that the legislature of Pennsylvania has within a very few years urged upon Congress the propriety of providing for the abolition of slavery in the District. The House of Assembly of New York, about the same time, I think, passed a similar vote.

After these proceedings, Mr. President, which were generally known, I think the country was not at all prepared to find that these petitions would be objected to, on the ground that they

asked for the exercise of an authority on the part of Congress, which Congress cannot constitutionally exercise; or that, having been formally received, the prayer of them, in regard to both objects, would be immediately rejected, without reference to a committee, and without any inquiry.

Now, Sir, the propriety, justice, and fitness of any interference of Congress, for either of the purposes stated in the petitions, are the points on which, as it seems to me, it is highly proper for a committee to make a report. The well-disposed and patriotic among these petitioners are entitled to be respectfully answered; and if there be among them others whose motives are less praiseworthy, it is not the part of prudence to give them the advantage which they would derive from a right to complain that the Senate had acted hastily or summarily on their petitions, without inquiry or consideration.

Let the committee set forth their own views on these points, dispassionately, fully, and candidly; let the argument be seen and heard; let the people be trusted with it; and I have no doubt that a fair discussion of the subject will produce its proper effect, both in and out of the Senate.

This, Sir, would have been, and is, the course of proceeding which appears to me to be prudent and just. The Senate, however, having decided otherwise, by a very large majority, I only say so much, on the present occasion, as may suffice to make my own opinions known

In reply to Mr. King of Alabama, Mr. Webster said:—

I am not aware of having said any thing which can justify the remarks of the honorable member. By what authority does the gentleman say that I have placed myself at the head of these petitioners? The gentleman cannot be allowed, Sir, to assign to me any place or any character which I do not choose to take to myself. I have only expressed my opinion as to the course which it is prudent and wise in us all to adopt, in disposing of these petitions.

It is true that, while the question on the reception of the petitions was pending, I observed that I should hold back these petitions till that question was decided. It is decided. The Senate has decided to receive the petitions; and being received, the manner of treating them must necessarily be settled. The

origin of the authority of Congress over this District; the views and objects of the States in ceding the territory; the little interest which this government has in the general question of slavery, and the great magnitude of the interest which individual States have in it; the great danger to the government itself of agitating the question here while things remain in their present posture in the States around us,—these, Sir, are considerations all intimately belonging to the question, as I think, and which a competent committee would naturally present to the Senate and to the public.

Mr. President, I feel bound to make one further remark. Whatever gentlemen may think of it, I assure them that these petitions, at least in many cases, have no factious origin, no political or party origin. Such may be the origin of some of them. I am quite sure it is not of all. Many of them arise from a sense of religious duty; and that is a feeling which should be reasoned with, but cannot be suppressed by a mere summary exercise of authority. I wish that all reasonable men may be satisfied with our proceedings; and that we may so act in regard to the whole matter as shall promote harmony, strengthen the bonds of our Union, and increase the confidence, both of the North and the South, in this government.

The Deposit Banks*

A STATEMENT of the affairs of the deposit banks having been transmitted by the Secretary of the Treasury, Mr. Webster moved that three thousand extra copies should be printed, and in support of this motion spoke as follows :—

SIR, — I would, in making this motion, call the attention of the Senate to the document from the treasury showing the state of the deposit banks at the latest dates, and from the tabular statement quote some of the leading facts.

The immediate liabilities of the banks amount, it appears, to nearly seventy-two millions of dollars; viz. the public deposits, \$ 30,678,879.91; the private deposits, \$ 15,043,033.64; the bills in circulation, \$ 26,243,688.36. The amount of specie held by these banks, it further appears, is \$ 10,198,659.24; that is to say, there is less than one dollar of specie for six dollars of debt; and there is due to the government by those banks more than three times the amount of all the specie. There are other items which swell the amounts on each side, such as debts due to banks, and debts due from banks. But these are only equalizing quantities, and of no moment in the view I am taking of the question.

Among the means of these deposit banks I see an item of "other investments" of no less amount than \$ 8,777,228.79. What is meant by these "other investments," I am not informed. I wish for light. I have my suspicions, but I have no proofs. Sir, look at the reported state of the Farmers and Mechanics' Bank of Michigan, the last in the list. The capital of

* Remarks made in the Senate of the United States, on the Deposit Banks on the 17th of March, 1836.

that bank is only \$ 150,000. Its portion of the public deposits is no less a sum than \$ 784,764.75. Now, Sir, *where is this money?* It is not in specie in the bank itself. All its specie is only \$ 51,011.95; all its discounts, loans, &c., are only \$ 500,000, or thereabouts. *Where is the residue?* Why, we see where it is; it is included in the item "*due from banks*, \$ 678,766.37." What banks have got this? On what terms do they take it? Do they give interest for it? Is it in the deposit banks in the great cities? and does this make a part of the *other liabilities* of these deposit banks in the cities? What are these other liabilities? But as to these "other investments," I say again, I wish to know what they are. Besides real estate, loans, discount, and exchange, I beg to know what *other investments* banks usually make.

In my opinion, Sir, the present system now begins to develop itself. We see what a complication of private and pecuniary interests have thus wound themselves around our finances. While the present state of things continues, or as it goes on, there will be no lack of ardor in opposing the land bill, or any other proposition for distributing or effectually using the public money.

We have certainly arrived at a very extraordinary crisis; a crisis which we must not trifle with. The accumulation of revenue must be prevented. Every wise politician will set that down as a cardinal maxim. How can it be prevented? Fortifications will not do it. This I am perfectly persuaded of. I shall vote for every part and parcel of the fortification bill, reported by the Military Committee. And yet I am sure, that, if that bill should pass into a law, it will not absorb the revenue or sufficiently diminish its amount. Internal improvements cannot absorb it; these useful channels are blocked up by vetoes. How, then, is this revenue to be disposed of? I put this question seriously to all those who are inclined to oppose the land bill now before the Senate.

Sir, look to the future, and see what will be the state of things next autumn. The accumulation of revenue may then probably be near fifty millions; an amount *equal, perhaps, to the whole amount of specie in the country*. What a state of things is that! Every dollar in the country the property of government!

Again, Sir, are gentlemen satisfied with the present condi-

tion of the public money in regard to its safety? Is that condition safe, commendable, and proper? The member from South Carolina has brought in a bill to regulate these deposit banks. I hope he will call it up, that we may at least have an opportunity of showing, for ourselves, what we think the exigency requires.

Payments for the Public Lands in Gold and Silver*

MR. PRESIDENT, — I should be fully justified, in common with those with whom I am accustomed to act, in taking no active course in regard to this resolution; in sitting still, suppressing, if possible, our surprise and astonishment, and letting these schemes and projects take the form of such laws as their projectors might propose.

We are powerless now, and can do nothing. We have resisted since 1832 all these measures affecting the currency of the country and the security of the public treasure. We have done so unsuccessfully. We struggled for the recharter of the Bank of the United States in 1832. The utility of such an institution had been proved by forty years' experience. We struggled against the removal of the deposits. That act, as we thought, was a direct usurpation of power. We strove against the experiment, and all in vain. Our opinions were disregarded, our warnings neglected, and we are now in no degree responsible for the mischiefs which are but too likely to ensue.

Who will look with the perception of an intelligent, and the candor of an honest man, upon the present condition of our finances and currency, and say that this want of credit and confidence which is so general, and which, it is possible, may ere long overspread the land with bankruptcies and distress, has not flowed directly from those measures, the adoption of which we so strenuously resisted, and the folly of which men of all parties,

* Remarks made in the Senate of the United States, on the 23d of April, 1836, on the following Resolution, submitted by Mr. Benton: —

“*Resolved*, That, from and after the — day of —, in the year 1836, nothing but gold and silver ought to be received in payment for the public lands; and that the Committee on Public Lands be instructed to report a bill accordingly.”

however reluctantly, will soon be brought to acknowledge? The truth of this assertion is palpable and resistless.

What, Sir, are the precise evils under which the finances of the government, and, I believe, of the country, now suffer? They are obviously two; the superabundance of the treasury, and its insecurity. We have more money than we need, and that money, not being in custody under any law, and being in hands over which we have no control, is threatened with danger. Now, Sir, is it not manifest that these evils flow directly from measures of government which some of us have zealously resisted? May not each be traced to its distinct source? There would have been no surplus in the treasury, but for the veto of the land bill, so called, of 1833. This is certain. And as to the security of the public money, it would have been at this moment entirely safe, but for the veto of the act continuing the bank charter. Both these measures had received the sanction of Congress, by clear and large majorities. They were both negatived; the reign of experiments, schemes, and projects commenced, and here we are. Every thing that is now amiss in our financial concerns is the direct consequence of extraordinary exercises of executive authority. This assertion does not rest on general reasoning. Facts prove it. One veto has deprived the government of a safe custody for the public moneys, and another veto has caused their present augmentation.

What, Sir, are the evils which are distracting our financial operations? They are obviously two. The public money is not safe; it is protected by no law. The treasury is overflowing. There is more money than we need. The currency is unsound. Credit has been diminished, and confidence destroyed. And what do these two evils, the insecurity of the public money and its abundance, result from? They trace their origin directly to the two celebrated experiments; the veto of the bank bill, followed by the removal of the deposits, and the rejection of the land bill. No man doubts that the public money would have remained safe in the Bank of the United States, if the executive veto of 1832 had not disturbed it.

It was that veto, also, which, by discontinuing the national bank, removed the great and salutary check to the immoderate issue of paper money, and encouraged the creation of so many State banks. This is another of the products of that veto.

This is as plain as that; the rejection of the land bill of 1833, by depriving the country of a proper, necessary, and equal distribution of the surplus fund, has produced this redundancy in the treasury. If the wisdom of Congress had been trusted, the country would not have been plunged into its present difficulties. They devised the only means by which the peace and prosperity of the people could have been secured. They passed the bank charter; it was negatived. They passed the land bill, and it met the same fate. This extraordinary exercise of power, in these two instances, has produced an exactly corresponding mischief, in each case, upon the subjects to which it was applied. Its application to the bill providing for the recharter of the Bank of the United States has been followed by the present insecurity of the public treasure, and a superabundance of money not wanted has been the consequence of its application to the land bill.

The country is the victim of schemes, projects, and reckless experiments. We are wiser, or we think ourselves so, than those who have gone before us. Experience cannot teach us. We cannot let well enough alone. The experience of forty years was insufficient to settle the question whether a national bank was useful or not; and forty years' practice of the government could not decide whether it was constitutional or not. And it is worthy of all consideration, that undue power has been claimed by the executive. One thing is certain, and that is, there has been a constant and corresponding endeavor to diminish the constitutional power of Congress. The bank charter was negatived, because Congress had no power under the Constitution to grant it; and yet, though Congress had no authority to create a national bank, the executive at once exercised the power to select and appoint as many banks as he pleased, and to place the public moneys in their hands on just such terms and conditions as he pleased.

There is not a more palpable evidence of the constant bias of this government to a wrong tendency, than this continued attempt to make legislative power yield to that of the executive. The restriction of the just authority of Congress is followed in every case by the increase of the power of the executive. What was it that caused the destruction of the United States Bank, and put the whole moneyed power of the country into the hands

of one man? Constitutional doubts of the power of Congress! What has produced this superabundance of money in the treasury? Constitutional doubts of the power of Congress! In the whole history of this administration, doctrines have prevailed, whose direct tendency is to detract from the settled and long-practised power of Congress, and to give in full measure, hand over hand, every thing into the control of the executive. Do gentlemen wish me to exemplify the truth of this? Let them look at the bank bill, the land bill, and the various bills which have been negatived respecting internal improvements.

Gentlemen now speak of returning to a specie basis. Does any man suppose it practicable? The resolution now under consideration contemplates that, after the current year, all payments for the public lands are to be made in specie. Now, if I had brought forward a proposition like this, I should at once have been accused of being opposed to the settlement of the new States. It would have been urged that speculators and capitalists could easily carry gold and silver to the West, by sea or land, while the cultivator, who wished to purchase a small farm, would be compelled to give the former their own price for the land, because he could not visit large cities, or other places where it was to be found, and procure the specie. These arguments, I am sure, would have met me, had I introduced a measure like this. If specie payments are to be made for public dues, I should suppose it best to begin with the customs, which are payable in large cities, where gold and silver can be more easily procured than on the frontiers. But whether from speculators or settlers, what is the use of these specie payments? The money is dragged over the mountains to be dragged back again; that is all. The purchaser of public lands will buy gold by bills on the Eastern cities; it will go across the country in panniers or wagons; the Land Office will send it back again by the return carriage, and thus create the useless expense of transportation.

I have from the very first looked upon all these schemes as totally idle and illusory; as not in accordance with the practice of other nations, or suited to our own policy, or our own active condition. But the effect of this resolution, what will it be? Let them try it. Let them go on. Let them add to the catalogue of projects. Let them cause every man in the West, who has a five-dollar bank-note in his pocket, to set off, post

haste, to the bank, lest somebody else should get there first, and get out all the money, and then buy land. How long will the Western banks stand this? Yet, if gentlemen please, let them go on. I shall dissent; I shall protest; I shall speak my opinions; but I shall still say, Go on, gentlemen, and let us see the upshot of your experimental policy.

The currency of the country is, to a great degree, in the power of the banking companies in the great cities. I am much opposed to the increase of these institutions; but the evil has begun, and cannot be averted. What one State does, another will do also. Danger and misfortune appear to be threatening the currency of the country; and although the Constitution gives the control over it to Congress, yet Congress is allowed to do nothing. Congress, and not the States, have the coining power; yet the States issue paper as a substitute for coin, and Congress is not supposed to be able to regulate, control, or redeem it. We have the sole power over the currency; but we possess no means of exercising that power. Congress, according to the prevailing doctrines, can create no bank, regulated by law; but the executive can appoint twenty or fifty banks, without any law whatever. A very peculiar state of things exists in this country at this moment; a country in the highest state of prosperity, more bountifully blest by Providence in all things than any other nation on earth, and yet in the midst of great pecuniary distress, its finances deranged, and an increasing want of confidence felt in its circulation. But the experiment was to cure all this. A few select and favorite banks were to give us a secure currency, one better and more practically beneficial than that of the United States Bank. And here is the result, or rather, to use the expression of M. de Talleyrand, here is "the beginning of the end."

We were told that these banks would do as well, if not a great deal better, for all the purposes of exchange, than the United States Bank; that they could negotiate as cheaply, and with as much safety; and yet the rate is now one and a half, if not two per cent., between Cincinnati and New York. Indeed, exchanges are all deranged, and in confusion. Sometimes they are at high rates both ways, between two points. Looking, then, to the state of the currency, the insecurity of the public money, and the rates of exchange, let me ask any honest and intelligent

man, of whatever party, What has been the result of these experiments? Does any gentleman still doubt? Let him look to the disclosures made by the circular of one of the deposit banks of Ohio, which was read by an honorable Senator here a day or two since. That bank will not receive the notes of the specie-paying banks of that State from the Land Office, as I understand the circular, or, at any rate, it tells the Land Office that it will not. Here are thirty or forty specie-paying banks in Ohio, all of good credit, and out of the whole number three are to be selected, entitled to no more confidence than the others, whose notes are to be taken for public lands. If gentlemen from the West and Southwest are satisfied with this arrangement, I certainly greatly commend their quiescent temperament.

I said, in the commencement of my remarks, I know of nothing I can do in regard to the resolution, except to sit still and see how far gentlemen will go, and what this state of things will end in. Here is this vast surplus revenue under no control whatever, and from appearances, though the session is nearly over, likely to remain so. Two measures of the highest importance have been proposed; one to diminish this fund, another to secure its safety. I wish to understand, and the country to know, whether any thing is to be done with either of these propositions. For my own part, I believe that a national bank is the only security for the national treasure; but as there is no such institution, a more extended use should be made of this treasure, and in its distribution no preference should be given, as was the fact in the instance of the banks of Ohio, to which I have just alluded. In some way or other this fund must be distributed. It is absolutely necessary. The provisions of the land bill seem to me eminently calculated to effect this object; but if that measure shall not be adopted, I will give my vote for any proper and equitable measure which may be brought forward, let it come from what quarter it may. In all probability, there will be a diminution in the amount of land sales for some time to come. The purchases of the last year, I suppose, have exceeded the demands of emigration. They were made by speculators, for the purpose of holding up lands for increased prices. The spirit of speculation, indeed, seems to be very much directed to the acquisition of the public lands. I cannot say what will be the further progress, or where the end, of these things; but

I think one thing quite clear, and that is, that the existing surplus ought to be distributed.

I repeat, that I intend no detailed opposition to the measure now before the Senate; and had I been in my seat, I should not have opposed the amendment to the pension bill. Let the experiments, one and all, have their course. I shall do nothing except to vote against all these visionary projects, until the country shall become convinced that a sound currency, and with it a general security for property and the earnings of honest labor, are things of too much importance to be sacrificed to mere projects, whether political or financial.

After some remarks by Mr. Niles of Connecticut, and Mr. Benton of Missouri, Mr. Webster said :—

The gentleman from Missouri has referred to the resolution of 1816; and I will beg leave to make a brief explanation in reference to the part I bore in it. The events of the war had greatly deranged the currency of the country, and a great pecuniary pressure was felt from one end of the continent to the other. The war took place in 1812, and not two months of it had passed before there was a cessation of specie payments by at least two thirds of all the banks of the country. So strong was the pressure, that, although the enemy blockaded the Chesapeake, so that not a barrel of pork or flour could be sent to market, yet the prices of these articles rose fifty per cent. This state of things continued; the collectors of the customs everywhere received the notes of their own local banks for duties payable at their own places, but would not receive the bills of the banks of the other cities. And what was the consequence? Why, at the close of the session of Congress, a member, if he had been fortunate enough to preserve any of his pay, had to give twenty-five per cent. to get the money received here exchanged for money that he could carry home. Another effect of this state of the currency was this. The Constitution provided that, in the regulation of commerce or revenue, no preference should be given to the ports of one State over those of another. Yet Baltimore, for instance, which had the exchange against her, had an advantage, by the payment of her duties in the bills of her banks, of at least twenty-five per cent. over some Northern cities. The resolution then introduced by me was to provide that the reve-

nue should be equally paid in all parts of the United States; and what was the effect of it? The bank bill had just passed, and the resolution was, that all debts due the government should be paid in the legal coin, in notes of the Bank of the United States, or in notes of banks that paid coin on demand. That was the operation of the resolution of 1816, rendered absolutely necessary by the existing state of things.

The gentleman from Connecticut inquires whether the omission to use the powers of Congress necessarily increases that of the executive. I will put a poser to the gentleman. The President himself admits that it is the appropriate duty of Congress to take the public treasure into its hands, and appoint agents to take care of it. The gentleman himself must admit this, for I suppose that he does not go the lengths of the Senator from Tennessee in being willing that things should remain as they were. Then, if it is their duty to take care of the national treasure, and they do not do it, it will go into the hands of the executive. Is not the custody of the national treasure power? and if they neglect to use this power, do they not augment the power of the executive?

The future historian of recent events in this country will find no topic more important and prominent, than a review of the doctrines which have been advanced with regard to executive power, and the means employed to increase it. The President himself first advanced the doctrine, and it has been repeated here, that the President is the sole representative of the people of the United States. Does the Constitution make him so? Does the Constitution acknowledge any other representative of the people than the members of the other house? But it has been found extremely convenient to those who wish to increase the President's power to give him this title. This claim of the President reminds me of a remark made many years ago by a member of the House of Representatives. That gentleman had voted against the first Bank of the United States, and had changed his mind, and was about to vote for the second. If, said the gentleman, the people have given us the power to make a bank, we can do it; and if they have not, we are the representatives of the people, and can take the power. And this is the doctrine applied to the President as the peculiar representative of the people. The Constitution gives him a modi-

cum of power, and he, claiming the lion's part, takes all the rest. This is the result of that overwhelming personal popularity which leads men to disregard all the received maxims of the founders of this government, and to yield up all power into the hands of one man. They cannot even now quote the doctrines of Mr. Jefferson without being scouted, and they cannot resist any power claimed by the executive, however arbitrary, but must yield up every thing to him by one universal confidence, because he is the representative of the people.

After further remarks by Mr. Niles, Mr. Webster said : —

It is the best course, when a gentleman replies to another, to use his very words as far as his recollection permits him. I have noticed, on other occasions, that the Senator from Connecticut gives his own language as that of the gentleman he is replying to, puts his own construction upon it, and then replies to this man of straw. I hope that the gentleman will, when he quotes me in future, use my exact language, and not put into my mouth words that I do not use. The gentleman, in speaking of the President, used the term representative of the people precisely in the meaning of the term as applied to a member of the House of Representatives. Now, it is impossible to believe in any idea of power pertaining to the President in this character. But I would remind the Senator that the President himself, in more than one communication, has claimed this character and power. It will be found in the Protest that he is the only single representative of the people. Sir, this is the very essence of consolidation, and in the worst of hands. Do we not all know that the people have not one representative? Do we not know that the States are divided into Congressional districts, each of which elects a representative, and that the States themselves are represented by two members on this floor? Do we not all know, that the framers of the Constitution carefully avoided giving him any such power at all? I admit that the President, in reference to his popularity merely, is called, with great propriety, the representative of the people; but in other respects he is no more so than was the President of the old Congress.

The Louisville Canal*

MR. PRESIDENT, — I regret the warmth with which my friend from Ohio,† and my friend from Louisiana,‡ have spoken on this occasion; but while I regret it, I can hardly say I blame it. They have expressed disappointment, and I think they may well feel disappointment. I confess, Sir, I feel disappointment also. Looking to the magnitude of this object, looking to its highly interesting character to the West, looking to the great concern which our Western friends have manifested for its success, I myself feel, not only disappointment, but, in some degree, mortification, at the result of the vote which has now been taken. That vote, if it stands, must be decisive of the success of the measure.

No doubt, Sir, it is altogether vain to pass this bill, unless it contain such provisions as will induce the stockholders in the corporation to part with their interests.

In the first place, Sir, why do we hear so much reproach and denunciation against the members of this corporation? Have they not hazarded their property in an undertaking of great importance and utility to the country? Has not Congress itself encouraged their enterprise, by taking a part of the stock on account of the government? Are we not ourselves shareholders in this company? Their tolls, it is said, are large; that is true. Yet not only did they run all the risks usually attending such enterprises, but, even with their large tolls, all their receipts, up to this hour, by no means give a return from their

* Remarks made in the Senate of the United States, on the Bill to authorize the Purchase, on the part of the Government, of the Private Stock in the Louisville and Portland Canal, on the 25th of May, 1836.

† Mr. Ewing.

‡ Mr. Porter.

capital equal to the ordinary interest of money in that part of the country.

There appears to me very great injustice in speaking of their tolls as "fines," and "penalties," and unjust impositions, or of their charter as an odious monopoly. Who called it so, or who so thought of it, when it was granted to them? Who but they were willing to undertake the work, to advance the money, and to run the risks and chances of failure? Who then blamed, reproached, or denounced the enterprising individuals who hazarded their money in a project to make a canal around the Falls of the Ohio? Who then spoke of their tolls as impositions, fines, and penalties? Nobody, Sir. Then all was encouragement and cheering onward. The cry was then, Go on! run the hazard; try the experiment; let our vessels and boats have a passage round this obstruction; make an effort to overcome this great obstacle. If you fail, the loss, indeed, will be yours; but if you succeed, all the world will agree that you ought to be fairly and fully remunerated for the risk and expenditure of capital.

Sir, we are bound in all justice and fairness to respect the legal rights of these corporators. For one, I not only respect their legal rights, but I honor their enterprise, I commend their perseverance, and I think they deserve well of the community.

But nevertheless, Sir, I am for making this navigation free. If there were no canal, I should be for making one, or for devising other modes of removing the obstructions in the river. As there is a canal, now the subject of private ownership and private property, I am for buying it out, and opening it, toll free, to all who navigate the river. In my opinion, this work is of importance enough to demand the attention of government. To be sure it is but a canal, and a canal round the falls of a river; but that river is the Ohio. It is one of those vast streams which form a part of the great water communication of the West. It is one of those running seas which bear on their bosom the riches of Western commerce. It is a river; but to the uses of man, to the purposes of trade, to the great objects of communication, it is one of those rivers which has the character of an ocean. Indeed, when one looks at the map, and glances his eye on all these rivers, he sees at once water enough to constitute or to fill an ocean, pouring from different distant,

and numerous sources, and flowing many thousand miles, in various channels, with breadth and depth of water in each sufficient for all the purposes of rapid communication and extensive trade. And if, in any portion of these inland seas, we find obstructions which the hand of man can remove, who can say that such removal is not an object worthy the attention of government?

Whoever, Mr. President, would do his duty, and his whole duty, in the councils of this government, must look upon the country as it is, in its whole length and breadth. He must comprehend it in its vast extent, its novel character, its sudden development, its amazing progress, confounding all calculation, and almost overwhelming the imagination. Our rivers are not the rivers of the European world. We have not to deal with the Trent, the Thames, and the Severn. With us, at least in this part of our country, navigation from the sea does not stop where the tide stops. Our ports and harbors are not at the mouths of rivers only, or at the head of the tides of the sea. Hundreds of miles, nay, thousands of miles, beyond the point where the tides of the ocean are felt, deep waters spread out, and capacious harbors open themselves to the reception of a vast and increasing navigation.

To be sure, Sir, this is a work of internal improvement; but it is not on that account either the less constitutional or the less important. Sir, I have taken a part in this great struggle for internal improvement from the beginning, and I shall hold out to the end. Whoever may follow, or whoever may fly, I shall go straightforward for all those constitutional powers, and for all that liberal policy, which I have heretofore supported.

I remember, Sir, and, indeed, a very short memory might retain the recollection, when the first appropriations for harbors on the great lakes were carried through this body, not without the utmost difficulty, and against the most determined opposition. I remember when Lake Ontario, Lake Erie, and Lake Michigan were likely to be condemned to a continuance in the state in which nature and the Indian tribes had left them, with no proof upon their shores of the policy of a civilized state, no harbors for the shelter of a hundred vessels, no light-house even to point out to the inland navigator the dangers of his course. I remember even when the harbor of Buffalo was looked upon

either as unimportant in itself, or, if not unimportant, yet as shut out from the care and the aid of Congress by a constitutional interdiction of works of internal improvement. But, Sir, in this case, as in others, the doctrine of internal improvement has established itself by its own necessity, its own obvious and confessed utility, and the benefits which it has already so widely conferred. So it will be, I have no doubt, in the case before us. We shall wonder hereafter who could doubt the propriety of setting free the navigation of the Ohio, and shall wonder that it was delayed even so long.

Mr. President, on the question of constitutional power, I entertain not a particle of doubt. How is it, let me ask, that we appropriate money for harbors, piers, and breakwaters on the sea-coast? Where do we find power for this? Certainly in no part of the Constitution in which we cannot find equal power to pass this bill. The same clause covers such appropriations, inland as well as on the sea-coast, or else it covers neither. We have foreign commerce, and we have internal commerce; and the power, and the duty also, of regulating, protecting, aiding, and fostering both, is given in the same words. For one, therefore, Sir, I look to the magnitude of the object, and not to its locality. I ask not whether it be east or west of the mountains. There are no Alleghanies in my politics.

I care not whether it be an improvement on the shore of the sea, or on the shore of one of those mighty rivers, so much like a sea, which flow through our vast interior. It is enough for me to know that the object is a good one, an important one, within the scope of our powers, and called for by the fair claims of our commerce. So that it be in the Union, so that it be within the twenty-four States, or the twenty-six States, it cannot be too remote for me. This feeling, Sir, so natural, as I think, to true patriotism, is the dictate also of enlightened self-interest. Were I to look only to the benefits of my own immediate constituents, I should still support this measure. Is not *our* commerce floating on these Western rivers? Are not *our* manufactures ascending them all, by day and night, by the power of steam, which is incessantly impelling a thousand engines, and forcing upwards, against their currents, hundreds of thousands of tons of freight? If these cargoes be lost, if they be injured, if their progress be delayed, if the expense of their transportation be increased, who

does not see that all interested in them become sufferers? Who does not see that every producer, every manufacturer, every trader, every laborer, has an interest in these improvements? Surely, Sir, this is one of the cases in which the interest of the whole is the interest of each. Every man has his dividend out of this augmented public advantage. But if it were not so, if the effect were more local, if the work were useful to the Western States alone, or useful mainly to Kentucky and Indiana alone, still I should think it a case fairly within our power, and important enough to demand our attention.

But, Mr. President, I felt the more pain at the result of the last vote of the Senate on account of those Western gentlemen who are so much interested in this measure, and who have uniformly supported appropriations for other parts of the country, which, though just and proper, are, as it seems to me, no more just and proper than this.

These friends have stood by us. They have uniformly been found at our side, in the contest about internal improvement. They have upheld that policy, and have gone with us through good report and evil report. And I now tell them that I shall stand by them. I shall be found where they look for me. I have asked their votes, once and again, for objects important to the Atlantic States. They have liberally given those votes. They have acted like enlightened and wise statesmen. I have duly estimated the high justice and liberality of their conduct. And having now an object interesting to them and to their constituents, a just object and a great object, they have a right to find me at their side, acting with them, acting according to my own principles, and proving my own consistency. And so they shall find me; and so they do find me. On this occasion I am with them; I am one of them. I am as Western a man, on this bill, as he among them who is most Western. This chair must change its occupant, another voice will address the Senate from this seat, before an object of this nature, so important, so constitutional, so expedient, so highly desirable to a great portion of the country, and so useful to the whole, shall fail here, for the want, either of a decisive vote in its support, or of an earnest recommendation of it to the support of others.

Distribution of the Surplus Revenue*

MR. PRESIDENT,—I have no desire to make myself responsible, in any special manner, for what may be done or omitted, on this subject. It is surrounded with difficulties, some of them, as I think, unnecessarily created; and as these have been produced by measures in which I did not concur, it naturally belongs to others, who did concur in those measures, and who now possess the power, to apply the remedy according to their judgments, and on their own responsibility. But I incline, nevertheless, to express my opinions on a subject of such very high interest, and to let them have what weight they are entitled to, if it may be supposed that they are entitled to any weight at all.

On one point, I presume, we are all agreed, and that is, that the subject is of great importance. It affects the finances of the country, the security of the public money, and the state of the currency; and it affects also the practical and actual distribution of power among the several branches of the government.

The bill comprises provisions for two objects:—

First, regulations for the custody of the public money, between the time of its collection and the time of its disbursement; and, as naturally connected with this, it concerns, or must very materially affect, the currency of the country, the exchanges, and the usual operations of credit in the commercial world.

* A Speech delivered in the Senate of the United States, on introducing the Proposition for the Distribution of the Surplus Revenue, on the 31st of May, 1836.

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The second direct object of the bill is a reduction, positive or contingent, of the amount of money in the treasury.

It seems probable, Sir, that the bill, so far as it respects the first of these objects, may be so modified as to receive the approbation of a majority of the Senate. A committee acting in a spirit of conciliation, and with an honest desire to avoid the points of former difference, might, I think, agree on the regulations to be prescribed to the deposit banks. The sentiments which have been advanced in the course of the discussion do not appear to be irreconcilable. In the present state of things, I see no way but to employ State banks as depositaries of the public money; and I have a sincere desire to subject them to such regulations, and such only, as shall make them, in the highest practicable degree, safe to the government and useful to the country.

To this end, I am of opinion that the first step is to increase their numbers. At present, their number, especially in the large cities, is too small. They have too large sums in deposit, in proportion to their capital and their legal limits of discount. By this means the public money is locked up. It is hoarded. It is withdrawn, to a considerable extent, from the general mass of commercial means, and is suffered to accumulate, with no possible benefit to government, and with great inconvenience and injury to the general business of the country. On this point there seems little diversity of opinion. All appear to agree that the number of deposit banks should be so far increased, that each may regard that portion of the public treasure which it may receive as an increase of its effective deposits, to be used, like other moneys in deposit, as a basis of discount, to a just and proper extent.

I regard this modification of the present system as indispensable.

I think, too, that, for the use of these deposits, the banks should pay a moderate interest. They can well afford it. The best banks in the States will be ready, I do not doubt, to receive the deposits, on that condition among others. What the rate of interest should be depends very much on what we may do with the surplus revenue. If we leave that surplus undistributed, the banks ought to pay a large interest. If we provide for distributing the surplus, thus leaving but a small amount in

the banks, and making it their duty, at the same time, to transfer the public funds from place to place when requested, without charge, the rate of interest should of course be less.

I agree, also, to what has been suggested respecting the authority to change those banks. They ought not to be changed but for plain and specific cause, set down and provided for in the law itself. Any restriction less than this will place a discretion in the hands of the executive, which will be very capable of being abused.

Nor should the Secretary be at liberty to order funds from one bank to another, for any other reason than the exigencies of the public service. He should not be at liberty to use the public treasures for the purpose of upholding the credit, or increasing the means, of any State institution.

The bill proposes that all the deposit banks shall be bound to keep, at all times, an amount of specie in their vaults bearing a certain proportion to their debts and liabilities. I approve of this, not so much from any belief that the solidity of the banks can be secured by any such provisions, as because a regulation of this kind may tend, in some measure, to retain a certain quantity of specie in the country, and by that means to secure, in some small degree, the general circulation against violent shocks. But I do not attach great importance to this.

In my opinion, Mr. President, if the bill pass with these modifications, a considerable benefit will be conferred on the community. Confidence will be, in some measure at least, restored; the banks will possess the power of useful action, and, the distressing uncertainty which now hangs over every thing being dispelled, the commercial community will find its way out of its present embarrassment.

Still, Sir, I am bound to say that the present system, in my opinion, can never be perfect. It can never be the best system. It can never be a safe regulator of the currency of the country, nor furnish solid security against derangement. It can never give to the mercantile world the cheapest, safest, and best means of facilitating domestic exchanges. The State banks were not made for these general purposes; they are not fitted for them; they have not the unity and comprehensiveness of plan and of operation which the successful accomplishment of such purposes requires. They are subject to various limitations by their char-

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ters, and it may even be doubtful, in some cases, whether they can legally bind themselves in such stipulations and contracts as we propose to submit to them. They were established for local, not for general objects. They did not expect to receive government deposits; and it might possibly be thought important to their stockholders and customers to be informed whether, in case of failure or insolvency, the *priority* of the United States would prevail, as in other cases, to the postponement of all other debts and claims. It is certainly my opinion, Sir, that we are running great hazards with the currency of the country. I see no well-assured reliance for its safety in this system of deposit banks, regulated as well as they may be. Nevertheless, regulation is necessary, nay, it is indispensable; and some present benefit at least would arise, I am persuaded, from the passage of a proper law.

I come now, Sir, to the other important object of this bill, *the reduction of the amount of money* in the treasury.

And here the first question is, whether there will be any surplus revenue. Will there be any thing to divide at the end of this year? On this point opinions are not agreed; but I think there will be a surplus, and a large surplus. I do not see any probability, either of such a falling off of income, on the one hand, or of such an increase of expenditure on the other, as shall leave the treasury exhausted at the end of this year. I speak of this year only, because the measure which I shall propose will be limited to the end of this year. My plan is to provide for the surplus which may be on hand at the end of this year, and to stop there. As to the probable state of the treasury at that time, I agree that it is matter of opinion and estimate. But we know what sum is on hand now, we are drawing near the close of the session, when appropriations will cease, and the year itself is already half expired. It would seem, then, that we ought to be able to judge of the state of the treasury six months hence, without risk of great and wide mistake. I proceed on the following general estimate and calculation:—

Amount of money in the treasury, Jan. 1, 1836,	\$ 25,000,000
Deduct unexpended balances of appropriations,	8,000,000
	<hr/>
	\$ 17,000,000

Amount forward,	\$ 17,000,000
Revenue of the first quarter of 1836,	11,000,000
Estimate for the last three quarters of 1836,	25,000,000
Stock in late Bank of the United States, including premium,	<u>8,000,000</u>
	\$ 61,000,000
Appropriations in 1836, estimated at \$ 35,000,000	
Deduct what will remain as unex- pended balance at the end of the year,	<u>14,000,000</u>
	21,000,000
	<u>\$ 40,000,000</u>

This estimate, Sir, does not rest solely on my own judgment. I find others, acquainted with the subject, and competent to judge, coming to conclusions not far different from my own. It is true, this rests in opinion. It cannot be mathematically proved that we shall have a surplus in the treasury at the end of the year; but the practical question is, whether that result is not so highly probable that it is our duty to make some provision for it, and to make that provision now. I propose only to divide the surplus. If it shall happen, after all, that there shall be no surplus, then the measure will have done no harm. But if the surplus shall not be forty millions, but only thirty-five, thirty, twenty-five, or even twenty, still, if it be now probable that it will reach even the lowest of these sums, is it not our duty to provide for it?

This is a contingent measure, not a positive one. It is intended to apply to a case very likely, in my judgment, to arise; indeed, I may say, a case which in all probability will arise; but if it should not, then the proposed measure will have no operation.

I have already observed, that, in my opinion, the measure should be limited to one single division, one distribution of the surplus money in the treasury. In that respect, my proposition differs from the bill of the honorable member from Carolina, and it differs, too, from the amendment proposed by the member from New York. I think it safest to treat the present state of things as extraordinary, as being the result of accidental causes,

or causes the recurrence of which hereafter we cannot calculate upon with certainty.

There would be insuperable objections, in my opinion, to a settled practice of distributing revenue among the States. It would be a strange operation of things, and its effects on our system of government might well be feared. I cannot reconcile myself to the spectacle of the States receiving their revenues, their means even of supporting their own governments, from the treasury of the United States. If, indeed, the land bill could pass, and we could act on the policy, which I think the true policy, of regarding the public lands as a fund belonging to the people of all the States, I should cheerfully concur in that policy, and be willing to make an annual distribution of the proceeds of the lands, for some years at least. But if we cannot separate the proceeds of the lands from other revenue, if all must go into the treasury together, and there remain together, then I have no hesitation in declaring now, that the income from customs *must be reduced*. It must be reduced, even at the hazard of injury to some branches of manufacturing industry; because this, in my opinion, would be a less evil than that extraordinary and dangerous state of things, in which the United States should be found laying and collecting taxes, for the purpose of distributing them, when collected, among the States of the Union.

I do not think it difficult to account for the present overflowing condition of the treasury. The treasury enjoys two sources of income, the custom-house and the public lands. The income from the customs has been large, because the commerce of the country has been greatly extended, and its prosperity has been remarkable. The exports of the country have continued to increase. While the cotton crop has grown larger and larger from year to year, the price of cotton has still kept up. Notwithstanding all the apprehensions entertained by prudent and sagacious men to the contrary, the world has not become overstocked with this article. The increase of consumption seems to keep pace with the increase of supply. The consequence is, a vast and increasing export by us, and an import corresponding with this export, and with the amount of earnings in the carrying trade; since the general rule undoubtedly is, taking a number of years together, that the amount of imports and the earnings of freights

are about equal to the amount of exports. The cotton-fields of the South most unquestionably form a great part of the basis of our commerce, and the earnings of our navigation another.

The honorable member from South Carolina has referred to the tariff act of 1828 as the true cause of the swollen state of the treasury. I agree that there were many things unnecessarily inserted in the act of 1828. But we know they were not put there by the friends of the act. That act is a remarkable instance, I hope never to be repeated, of unnatural, violent, angry legislation. Those who introduced it designed, originally, nothing more than to meet the new condition of things which had been brought about by the altered policy of Great Britain in relation to taxes on wool. A bill with the same end in view had passed the House of Representatives in 1827, but was lost in the Senate. The act of 1828, however, objectionable though it certainly was in many respects, has not been, in my opinion, the chief cause of the over-product of the customs. I think the act of 1832, confirmed by the act of 1833, commonly called the Compromise Act, has had much more to do in producing that result. Up to the time of the passing of the act of 1832, the *minimum principle* had been preserved in laying duties on certain manufactures, especially woollen cloths. This ill-understood and much-reviled principle appears to me, nevertheless, and always has appeared to me, to be a just, proper, effectual, and strictly philosophical mode of laying protective duties. It is exactly conformable, as I think, to the soundest and most accurate principles of political economy. It is, in the most rigid sense, what all such enactments, so far as practicable, should be; that is to say, a mode of laying *specific duty*. It lays the impost exactly where it will do good, and leaves the rest free. It is an intelligent, discerning, discriminating principle; not a blind, headlong, generalizing, uncalculating operation. Simplicity, undoubtedly, is a great beauty in acts of legislation, as well as in the works of art; but in both it must be a simplicity resulting from congruity of parts and adaptation to the end designed; not a rude generalization, which either leaves the particular object unaccomplished, or, in accomplishing it, accomplishes a dozen others also, which were not desired. It is a simplicity which is wrought out by knowledge and skill; not the rough product of an undistinguishing, sweeping general principle.

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Let us suppose that the gradations in woollen cloths be represented by a line. At one end of this line are those of the highest price, and let the scale descend to the other end, where, of course, will be those of the lowest price. Now with the two ends of this line our manufacturers have not much to do; that is to say, they have not much to do with the production of the very highest, or the very lowest, of these articles. Generally speaking, they work in the intermediate space. It was along this space, along this part of the line of work, that the *minimum* principle, as it has been usually called, operated. It struck just where the great object of protection required it to strike, and it struck nowhere else. All the rest it left free. It wasted no power. It accomplished its object by the least possible expenditure of means. Its aim was levelled at a distinct and well-discerned object, and its aim was exact, and the object was reached.

But the *minimum* had become the subject of obloquy and reproach. It was railed at, even, in good set terms, by some who professed to be, and who doubtless were, friends of the protective policy. It was declared to be a deception. It was said that it cheated the people, inasmuch as under its operation they did not see what amount of taxes they really paid. For one, I did not admit the fact, nor yield to the argument. I had no doubt the people knew what taxes they paid under the operation of the laws, as well as we who passed the laws; and whether they stopped to make precise calculations or not, if they found the tax not oppressive, and the effect of the law decidedly salutary, I did not believe they would complain of it, unless it was made a part of some other controversy. The *minimum* principle, however, in its application to broadcloths, was overthrown by the law of 1832, and that law, as it came from the House of Representatives, and as it finally passed, substituted a general and universal *ad valorem* duty of fifty per cent. An effort was made in the Senate to resist this general *ad valorem* system, and to hold on to the specific duty. But it did not prevail. The Senate was about equally divided. The casting or turning vote was held by a gentleman for whom I have always entertained a very high regard, a member from Maryland, not now in the Senate. After the discussion, he admitted himself *almost* satisfied that the law, in this particular, ought not to be altered; but his impression against the *minimum*, nevertheless, finally prevailed, and

he voted for the new mode, that is to say, the general *ad valorem* mode of laying the duty; and to render this effectual, he himself proposed to carry that duty as high as sixty per cent. The Senate fixed it, indeed, at fifty-seven *per cent.*; but the House non-concurred, and the law finally passed, as all know, establishing an *ad valorem* duty of fifty per cent. on woollen cloths, and some other articles.

Now, Mr. President, when we recollect that the duties on woollen fabrics, of all kinds, bring into the treasury four, or five, or six millions a year, every man acquainted with our manufactures must see at once that a portion of this vast sum is perfectly useless as a protective duty; because it is imposed on fabrics with which our own manufacturers maintain no competition, and in regard to which, therefore, they ask no protection. I have instituted sundry inquiries for the purpose of learning, and of showing, what is the amount of duties collected annually on woollens, which have no distinct bearing, as protective duties, on any of the products of our manufactures. At present I will only say, but will say that with great confidence, that, of the surplus money now in the treasury, several millions are the proceeds of *ad valorem* duties which have conferred no perceptible benefit whatever on our manufacturing establishments. It is therefore, Sir, that I regard the law of 1832, and not the law of 1828, as the great error in our legislation. This law of 1832 was confirmed by the act of 1833, and is, of course, in actual operation at the present moment, except so far as it has been affected by the gradual reduction provided for by the last-mentioned act. I wish not to discuss the act of 1833. I do not propose, at present, to disturb its operation; but having alluded to it, I take the occasion of saying, that I have not the least idea that that act can remain as the settled system of this country. When the honorable member from Kentucky* introduced it, he called it a measure of conciliation, and expressed the hope that, if the manufacturing interests should be found to suffer under it, it might be modified by general consent. Although never concurring in the act, I entertain the same hope. I pray most fervently that former strifes and controversies on the tariff question may never be revived; but

* Mr. Clay.

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at the same time it is my opinion that the principles established by the law of 1833 can never form the commercial system of this country.

But, Mr. President, the most striking increase in the public revenue is in that branch of it which is derived from the sales of the public lands. How happens it that the proceeds from this quarter have sprung up, thus suddenly, to such a height? The Secretary's estimate of the proceeds of the sales of the public lands for this year was only four millions. The actual sales are likely to be twenty. What has occasioned this great and unexpected augmentation?

Sir, we are to remember that the growth and prosperity of the country generally are remarkable, and that, as these increase, the tide both of people and property which flows westward increases also. The reflow of this property is into the treasury through the land offices.

The well-sustained demand for cotton has, of course, augmented the demand for cotton lands; and we all know that good lands for the production of that crop are sought for with great eagerness. We are to include, too, among the causes tending to produce heavy purchases, the great expansion of the paper circulation, and the amount of foreign capital that has found its way, through one channel or another, into the country, and is giving an additional stimulus and additional facility to enterprises, both public and private. Many of the States have contracted large debts, for purposes of improvement, and their stocks have gone abroad. I suppose there may be fifty millions of State securities now owned in Europe. Foreign capital, also, has been introduced to a great extent of late, as the basis of commercial enterprise, a thing ordinarily to be expected, when we look to the low rates of interest abroad, and the great demand for money at home. It would be hazardous to estimate proportions and amounts on such a subject; but it is certain that a large amount of property now afloat, in ships and goods, owned by Americans, and sailing and transported on American account, is put into commercial operation by means of foreign capital actually advanced, or acting through the agency of credit. This introduction of foreign capital, in all its various forms, has doubtless had some effect in extending our paper circulation, and in raising prices; and certainly it has had a direct effect upon the ability to make investments in the public lands.

And, Sir, closely connected with these causes is another, which I should consider, after all, the main cause; that is, the low price of land, compared with other descriptions of property. In every thing else prices have run up; but here price is chained down by the statute. Goods, products of all kinds, and indeed all other lands, may rise, and many of them have risen, some twenty-five, and some forty or fifty per cent.; but government lands remain at a dollar and twenty-five cents an acre; and vast portions of this land are equal, in natural fertility, to any part of the globe. There is nothing, on either continent, to surpass their quality. The government land, therefore, at the present prices, and at the present moment, is the cheapest safe object of investment. The sagacity of capital has found this out, and it grasps the opportunity. Purchase, it is true, has gone ahead of emigration; but emigration follows it, in near pursuit, and spreads its thousands and its tens of thousands close on the heels of the surveyor and the land-hunter. When I traversed a part of the Western States, three years ago, I could not but ask myself, in the midst of the vast forests around me, Where are the people to come from who are to begin cultivation here, and to checker this wilderness with fields of wheat? But when, returning on the Cumberland Road, or while passing along other great channels of communication, I encountered the masses of population moving westward, I was tempted to ask myself, on the other hand, a far different question, and that was, Where in the world will all these people find room to settle?

Nor are we to overlook, in this survey of the causes of the vast increase in the sale of lands, the effects, almost magical, of that great and beneficent agent of prosperity, wealth, and power, INTERNAL IMPROVEMENT. This has brought the West to the Atlantic, and carried the Atlantic to the West. Ohio, Indiana, Illinois, Michigan, and Wisconsin are no longer places remote from us. Railroads and canals have brought the settlers of these regions so near to us, that we almost see the smoke of their cabins and hear the stroke of their axes. From Maine to the Upper Mississippi is already a beaten track, with one's acquaintances everywhere along the road, and that road even not a long one, if we measure it by the time required to pass over it.

Mr. President, if I am asked how long these causes, or any of

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them, will continue to act with this effective energy, I readily answer that I cannot foresee. Nor can I foresee other events, which may affect our revenue in years to come. And it is for this reason precisely, that what I propose is limited to a single year. All the uncertainties and contingencies which naturally belong to human affairs hang over us. I know not what expenditures may be called for next year. I know not what may be necessary to satisfy the all-absorbing demand of Indian wars and Indian treaties. I know not what events, at home or abroad, may shake our commercial security. I know not what frosts and blights may do against the cotton crops. I know not what may happen to our currency. I cannot tell what calls for the use of capital in other objects may affect the purchase of public lands; for I am persuaded that, hereafter, our income from that source is likely to be much more fluctuating than heretofore, as depending less on the actual amount of emigration, and more on the occasional plenty or scarcity of money. Emigration must hereafter supply its wants, much more than formerly, out of lands already separated from the public domain.

Under these circumstances, it appears to me to be prudent to limit the proposed division to a single operation. Let us relieve the treasury for once; and then let us pause and contemplate our condition. As to what may then be expedient, events will enlighten us. We shall be able to judge more wisely by the result of our experiments, and the future will be more visible as it approaches nearer.

It will be observed, Sir, that I give full time to the deposit banks to prepare themselves to pay over these funds. Time for this purpose is indispensable. We might do harm rather than good, if we were to require any sudden operation of that kind. Give the banks time; let them know what they have to do; let the community see into what channels the surplus funds are to flow, and when they are to begin to flow; and men of business will then be able to see what is before them.

I have the fullest confidence that, if we now adopt this measure, it will immediately relieve the country. It will remove that severe and almost unparalleled pressure for money which is now distressing and breaking down the industry, the enterprise, and even the courage, of the commercial community. I assure you,

Sir, this present pressure is not known, or felt, or believed here, in any thing like its true extent. If we give no relief, I know not what may happen, even in this day of high prosperity. I beseech those who have the power not to let the opportunity pass, but to improve it, and thereby to revive the hopes and re-assure the confidence of the country. Having expressed these sentiments, and brought forward this specific proposition for one division among the States of the surplus funds, I should now move to commit the whole subject, either to a select committee or the Committee on Finance, were it not that, looking to the present composition of the Senate, I am not desirous of taking a lead in this measure. The responsibility naturally rests with those who have the power of majorities, and who may expect the concurrence of other branches. Meantime, I cheerfully give myself to any labor which the occasion requires, and I express my own deep and earnest conviction of the propriety and expediency of the measures which I have endeavored to explain and to support.

Mr. W. then proposed the following by way of amendment to the "Bill to regulate the Deposits of the Public Money," as an additional section : —

SEC. —. *And be it further enacted*, That the money which shall be in the treasury of the United States on the first day of January, eighteen hundred and thirty seven, reserving — millions, shall be divided among the several States, in proportion to their respective amounts of population, as ascertained by the last census, and according to the provision of the second section of the first article of the Constitution ; and the Secretary of the Treasury shall pay the same to such persons as the several States may authorize to receive it, in the following proportions, and at the following times ; viz. one half on the first day of April, eighteen hundred and thirty-seven ; one quarter part on the first day of July, eighteen hundred and thirty-seven ; and the remaining quarter on the first day of October, eighteen hundred and thirty-seven ; and all States which shall receive their several proportions, according to the provisions of this act, shall be taken and understood thereby to pledge the public faith of such States to repay the same, or any part thereof, to the United States, whenever Congress shall require the same to be repaid, by any act or acts which shall require such payment ratably, and in equal proportion, from all the States which have received the same.

